1689

SUPREME COURT OF THE UNITED STATES.

No. 243.

ELLEN E. WHITE, ADMINISTRATRIX OF CHARLES WHITE, DECEASED, APP'T,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

"San Antonio."

INDEX.

	Original.	Print.
Contents of transcript	1	1
Petition	3	2
Deposition of L. A. D. Ortega	4	3
" Wm. A. Richardson	5	5
" J. B. Alvarado	7	7
" M. G. Vallejo	9	8
" J. P. Leese	11	10
" J. B. Alvarado	12	11
" José de la Rosa	13	12
" John Martin	15	14
Order of revival	18	16
Doc. H. H. No. 1, annexed to deposition of Ortega	18	17
"B. P. L."—Exhibit to deposition of J. B. Alvarado	18	17
Map	19	18
Translation of grant	20	18
Deed—Ortega to Brouillet	21	19
Deed 2—White	22	20
Conveyance—Ortega to White	23	21
Affidavit and motion of the United States law agent	24	22
Opinion of the board, delivered by Com'r R. A. Thompson	25	23
Decree of confirmation	27	24
Order	27	25
Notice of appeal	28	25
Notice	28	26

	Original.	Print
Deposition of José Ramon Mesa	29	26
" Francisco Miranda	31	28
" José S. Berreyesa	33	30
Certified copy of expediente No. 397	36	32
Map	38	34
Deposition of Joel P. Walker	39	35
" Michael L. Acolti	46	41
" Jas. B. Hine	50	45
" Carlos Patton	51	46
Petition for review	53	48
Answer	53	48
Stipulation and order	54	48
Stipulation	54	49
Translation of expediente of Juan Miranda	55	49
Translation of expediente of J. N. Padilla	57	52
Certified copy of grant to B. Boyorgues	59	54
Translation of grant to Boyorgues	61	55
Deposition of R. C. Hopkins	62	56
" P. T. Sherrebak	68	61
" G. H. Nye	69	62
Copy of order dismissing Miranda title	70	64
Testimony of R. C. Hopkins	71	65
Certified copy of deposition of Jos. L. Folsom	72	65
Map	76	68
Copy of original grant to M. G. Vallejo for the Petaluma ranch	77	69
Translation of grant for Petaluma ranch	79	71
Opinion of Hon. Judge McAllister	80	72
Decree	92	83
Order granting appeal	93	84
Clerk's certificate	94	84
Minutes of court for 1857	95	85
Order to file mandate	97	85
Mandate	97	86
Petition of Valentine to intervene	100	88
Opinion denying petition	106	91
Order denying petition	115	95
Stipulation, order, &c	116	96
Deposition of R. C. Hopkins	117	97
Exhibit, Hopkins's, No. 1, (tracing)	135	104
Deposition of Alvarado	137	105
" Boyorgues	149	110
" J. Walker	156	113
" Brouillet	162	116
Exhibit, Brouillet, No. 1	170	120
Deposition of W. Blanding	172	121
Exhibit, Blanding, No. 1	179	124
" " No. 2	180	125
Deposition of M. Arms	181	125
Admission by U. S. attorney	187	128

	Original.	Print.
Deposition of R. C. Hopkins	188	139
Exhibit, Hopkins, A	202	134
Map	205	136
Exhibit, Hopkins, B	209	137
" " C	214	140
" " D	223	145
" " E	227	147
" " F	229	149
" " G	230	150
" " H	231	151
Copy espediente, No. 397	232	151
Map	237	153
Deposition of George Fisher	241	154
Exhibit, Fisher, No. 1	249	158
" " No. 2	251	159
" " No. 3	252	160
" " No. 4	252	160
Deposition of F. D. Pomeroy	253	161
" J. H. Fine	258	163
" A. Fine	261	165
" Hudspeth	266	167
" Sweet	269	169
" Miller	272	171
" Pearce	276	173
" Shattuck	282	176
" M. G. Vallejo	288	178
Exhibit, Vallejo, No. 1	293	180
" " No. 1, translation	317	192
" " No. 2	349	204
" " No. 2, translation	349	204
Deposition of R. C. Hopkins	350	204
Translation of espediente of Vioget	361	209
Certified copy map, espediente of Vioget	373	214
Traced copy espediente, No. 320	377	215
Map	379	216
Translation of espediente No. 320	383	217
Traced copy map "Nicasio"	389	219
Traced copy juridical possession to F. Feliz	392	220
Translation of juridical possession to F. Feliz	398	223
Petition of Boyorgues for Laguna San Antonio	406	227
Translation of same	409	229
Deposition of R. C. Hopkins	413	230
Part of espediente of Boyorgues	416	232
Translation of same	418	233
Opinion	419	233
Decree	447	245
Order granting appeal	449	246
Clerk's certificate	451	247

1 *Transcript of the proceedings in case No. 558, Charles White, claimant, vs. The United States, defendant, for the place named San Antonio.*

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CAL'A.

Be it remembered, that on this seventh day of February, anno Domini one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Charles White, for the place named San Antonio, was presented, and ordered to be filed and docketed with No. 558, and is as follows, to wit:

(*Vide* page 5 of this transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *March 25th*, 1853.

In case No. 558, Charles White, for the place named "San Antonio," the deposition of "Leonidio Antonio Duque de Ortega," a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with documents marked H. H., Nos. 1 and 2, annexed thereto, was filed.

(*Vide* page 7 of this transcript.)

SAN FRANCISCO, *Aug. 16th*, 1853.

In the same case the deposition of William A. Richardson, a witness in behalf of the claimant, taken before Commissioner R. Aug. Thompson, was filed.

(*Vide* page 10 of this transcript.)

SAN FRANCISCO, *November 14th*, 1853.

In the same case the deposition of Juan B. Alvarado, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, was filed.

(*Vide* page 14 of this transcript.)

2 SAN FRANCISCO, *October 23d*, 1854.

In the same case the depositions of Jacob P. Leese and Mariano G. Vallejo, witnesses in behalf of the claimant, taken before Commissioner Peter Lott, were filed.

(*Vide* pages 17 and 21 of this transcript.)

SAN FRANCISCO, *December 7th*, 1854.

In the same case the depositions of José de la Rosa and Juan B. Alvarado, witnesses in behalf of the claimant, taken before Commissioner Peter Lott, *was* filed.

(*Vide* pages 23 and 25 of this transcript.)

SAN FRANCISCO, *December 12th*, 1854.

Case No. 558 was ordered to be placed at the foot of the 3d class cases on the trial docket.

SAN FRANCISCO, *January 2d*, 1855.

Case No. 558 was submitted on briefs, and taken under advisement by the board.

In the same case, on motion of the counsel for the claimant, the following order was made, to wit:

"It is ordered by the board that this claim be revived in the name of Elien E. White, *administrator* of Chas. White, deceased."

SAN FRANCISCO, *January 9th*, 1855.

In the same case the deposition of John Martin, a witness in behalf of the United States, taken before Commissioner Alpheus Felch, was filed, in accordance with the stipulation annexed thereto.

(*Vide* page 29 of this transcript.)

SAN FRANCISCO, *April 24th*, 1855.

In the same case the U. S. law agent filed the following affidavit and motion, to wit.

(*Vide* page 47 of this transcript.)

SAN FRANCISCO, *May 22nd*, 1855.

In the same case Commissioner R. Aug. Thompson delivered the decision of the board, upon the motion of the U. S. law agent, on the 24th April, 1855, overruling the same.

3 SAN FRANCISCO, *June 26th*, 1855.

In the same case Commissioner R. Aug. Thompson delivered the opinion of the board confirming the claim.

(*Vide* page 49 of this transcript.)

And the following order was made, to wit.

(*Vide* page 53 of this transcript.)

Petition.

To the honorable the board of U. S. land commissioners appointed to settle private land claims in California:

The petition of Charles White respectfully represents: That on or about the tenth day of August, A. D. 1840, Juan B. Alvarado, then gov. of California, in the name of the Mexican nation, by virtue

of the laws then in force, the customs and usages of the country affecting grants of land in California, granted in full property, unto Antonio Ortega, the tract of land and rancho known by the name of "Arroyo de San Antonio," bounded on the north by the oak grove of the Miseria, on the east by the estero of Petaluma, and on the west by the laguna of San Antonio, on the south by the rancho of Camilo, as described more fully in the papers and maps relating to said grant of land, the originals being in the hands of your petitioner, ready to be produced and proved, and copies of the same are herewith filed as part of this petition.

And your petitioner further shows, that about or during the month of November, A. D. 1852, the said Antonio Ortega sold and conveyed unto your petitioner all of the above-described rancho and lands, by good and sufficient deed, duly acknowledged and authenticated, the original being in the possession of your petitioner, ready to be produced and proved, and a copy of the same your petitioner prays leave to file as a part of this petition, so soon as the said copy can be prepared.

And your petitioner further shows that the said Antonio Ortega occupied the said lands and rancho from the date of said grant until within a recent time past, either by living upon the lands himself or causing his employees and servants to live upon said land, and attend upon his stock, and cultivate the said lands.

And your petitioner further shows that he has been informed that one Thomas B. Valentine has filed a pretended claim, before your honorable board, to the said lands, or to some part or portion thereof, but of its nature or value your petitioner is ignorant.

4 And your petitioner, therefore, prays the careful investigation of this his claim, before any confirmation shall be made of any other pretended claim to said lands.

Respectfully submitted for such action as the justice and nature of the claim may require.

E. O. CROSBY,
Of Counsel for Cl'm't.

Filed in office February 7th, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of L. A. D. de Ortega.

SAN FRANCISCO, *March 25th*, 1853.

On this day, before Commissioner Hiland Hall, came Leonido Antonio Duque de Ortega, a witness in behalf of the claimant, Charles White, petition No. 558, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is Leonito Antonio Duque de Ortega; I reside in Contra Costa county, and my age is seventy-two years. A paper is shown me purporting to be a petition to the governor for land, dated June

12th, 1840, with report of M. G. Vallejo and decree of Alvarado thereon, which paper is hereto attached and marked H. H. No. 1. The petition has my own genuine signature upon it. It was presented by me to Governor Alvarado, and the two signatures of Alvarado and that of M. G. Vallejo, upon the paper, are genuine. I saw the said Vallejo sign the paper, and am acquainted with the handwriting of Alvarado. After the making of the decree of Governor Alvarado, and during the same year, I went to Monterey and applied to Alvarado for a full and formal title, but it was during the recess of the departmental assembly, and I could not obtain it. I did not occupy the land in person, but my father in-law, Juan Miranda, occupied it for me in the year 1840. Miranda occupied the land by placing his son there, who remained there six years, having a hut there, and he had fifty cows there. I applied to Governor Alvarado, with the paper before mentioned, and presented a map, and then I went to Oregon, leaving the papers with the governor.

The map I presented is now produced and is hereunto attached, and marked H. H. No. 2. I have been eighteen years in the military service of Mexico, and came here as a lieutenant and adjutant, and served six months as such in Sonoma. I have not had any other grant of land in California than that of the Arroyo de San Antonio, before mentioned.

5 In answer to questions by the associate law agent, the witness testified as follows:

My father-in-law occupied the land on my account for the whole six years, but never paid me anything whatever for the use of it. I think my father-in-law died in 1845; I went to Oregon in 1843, and was there four years, and he died the year before I returned. I do not know whether Juan Miranda obtained a grant of the land to himself or not. Teodoro Miranda, a son of Juan Miranda, was occupying the land when I returned from Oregon, the same that was occupying it when I went. He continued occupying the land from 1841 to 1848; I do not know who occupied the land after 1848. I claimed the land after I came back from Oregon; I went to Alvarado and got the papers for the purpose of establishing my claim. This was after the country had been taken by the Americans. I kept the papers about a year, and then delivered them to a French priest by the name of Bronillet; I made a present of the land to the priest, in pay for the education of my children for eight years. I never received judicial possession of the land. I have no interest in the success of this claim, or the want of it.

Question. Did you ever demand of Teodoro Miranda the possession of the land?

Answer. I did not; I went to his mother, who had the control, and demanded *of it her*. She told me the rancho belonged to her; that she had a paper from Murphy, and from Leese, the alcalde of Sonoma. I did nothing afterwards towards getting the occupancy of the land, but went to Alvarado and got the papers before mentioned.

LEONITIO ANTONIO DUQUE DE ORTEGA.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office March 25, 1853.

GEO. FISHER, *Sec'y.*

Deposition of Wm. A. Richardson.

CHARLES WHITE
vs.
UNITED STATES.

OFFICE OF THE COMMISSIONERS OF CALIFORNIA LAND CLAIMS,
San Francisco, Aug. 16, 1853.

This day, before Com'r Rob't A. Thompson, came William A. Richardson, a witness in behalf of claimant, case No. 558, and after being duly sworn, deposed as follows:

6 Present: E. O. Crosby, esq., attorney for claimant, and Robert Grenhow, esq., ass't law agent.

Question 1st, by attorney for claimant. What is your name, age, and place of residence?

Answer. My name is William A. Richardson; my age fifty-eight years; I reside at Sancelito, Marin co., California, and have resided in California thirty-one years.

Question 2d. Do you know the place called the "Arroyo de San Antonio;" if so, where is it situated and what are its boundaries?

Answer. I do; it is situated in Marin county, California; it issues from the laguna of San Antonio, a running in a northeasterly direction; it empties in the creek of Petaluma.

Question 3d. Do you know the ranch or tract of land called the Arroyo de San Antonio; and if so, what are its boundaries?

Answer. I do not know the exact boundaries. I know that the ranch house is situated near where the arroyo empties into Petaluma creek.

Question 4th. Look at the map marked H. H. No. 2, and annexed to the deposition of L. A. Duque de Ortega, taken in this case, and state whether or not it is a correct representation of the aforesaid ranch or tract of land.

Answer. The points of the compass and the course of the arroyo are not correctly laid down. The point intended for the north should be turned about sixty degrees east. With these exceptions, the map is generally correct, considering the time and circumstances when and under which it was made.

Question 5th. Do you know anything of the original grant of said land, and by whom and to whom it was granted? State all you know in relation to it.

Answer. It was granted to Antonio Ortega by Governor Alvarado, in the year 1840.

Question 6. State what you know of its occupation by Ortega—when and in what manner he occupied it.

Answer. It never was occupied by Ortega in person; it was occu-

pied by the family of Juan Miranda, by virtue of a contract between said Miranda and Ortega; but shortly afterwards all the family of Miranda left, except his son Theodore, who continued to occupy it when I was last there, now nearly three years ago. He went there within two months or less after Ortega got the grant.

Question 7th. At whose instance, and for whose benefit, did Miranda take possession of said rancho?

Answer. At the instance and for the benefit of Antonio Ortega.

Question 8. In what manner did he occupy it? What improvements did he make on it, and at what time did he make them?

Answer. He occupied it with horned cattle, horses, and mares, and by cultivation. He first built corrals, and afterwards a house. Within about four months after he went on the land he built
7 the corrals and house. He seeded a crop of wheat the fall after he went there, and made a good crop. He also had a garden spot on the creek, in which he cultivated Indian corn, melons, and other vegetables.

Question 9. From whom did you understand that Miranda occupied the rancho for Ortega?

Answer. I understood it both from Ortega and Miranda; they both told me so.

(NOTE.—Questions and answers in relation to map objected to by law agent.)

Questions by Volney E. Howard, esq., United States law agent.

Were you present when Governor Alvarado made the grant or concession spoken of?

Answer. I was not.

Question by same. Do you know when Ortega moved to Oregon and when he returned?

Answer. I do not recollect when he went to Oregon; he returned, I think, in 1846.

Question by same. Can you state about how many years he was absent?

Answer. I think he was absent three or four years.

Question by same. How do you know that the boundaries of which you have spoken are the boundaries of the land claimed in this case?

Answer. By seeing the grant, and having it in my possession, and by living frequently at the house.

Question by same. Is this land within ten leagues of the sea-coast?

Answer. I think it is within about seven leagues of the coast.

Question by same. Who is now in possession of the land claimed in this case?

Answer. I do not know.

And further this deponent saith not.

WILLIAM A. RICHARDSON.

Sworn to and subscribed before me this 16th day of August, 1853.

R. AUG. THOMPSON, *Com'r.*

Filed in office Aug. 16th, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of J. B. Alvarado.

SAN FRANCISCO, *Nov.* 14*th*, 1853.

This day, before Thompson Campbell came Juan B. Alvarado, a witness in behalf of claimant, Charles White, No. 558, who,
8 after being duly sworn, deposed as follows, his evidence being interpreted by the secretary:

Questions by the attorney for claimant.

1st question. What are your name, age, and place of residence?

Answer. My name is Juan B. Alvarado; my age is forty-three years; and I reside in Contra Costa county, California.

2d question. Look on the document now here shown to you, purporting to be a petition by Antonio Ortega to the governor for a grant of land called "San Antonio," and a marginal decree of the governor, a report of M. G. Vallejo, and a decree of concession, which is marked H. H. No. 1, and attached to the deposition of L. A. D. de Ortega, heretofore taken and filed in this case, and state whether the signatures of Antonio Ortega, M. G. Vallejo, and your own, appearing thereon, are the true and genuine signatures of said persons, and whether you are acquainted with their handwriting.

Answer. I have looked on the paper, and I recognise the signatures above mentioned as the true and genuine signatures of the persons named. That of "Alvarado," in two places thereon, is my own. I am acquainted with the handwriting of said Vallejo and Ortega. The body of the marginal decree on the first page, and the decree of concession on the second, were written by me.

3d question. What offices have you held in California under the Mexican government, and at what time did you hold such offices?

Answer. I have held several offices, but the most important was that of governor and political chief, which I held from the commencement of 1837 until the end of the year 1842.

4th question. State what was the usage and custom of the governors of California in granting lands to military officers, and what preference, if any, was given to them over other citizens.

Answer. I don't recollect of any instance where a military officer and a citizen claimed the same piece of land, but the custom established by law was to prefer the person having the most merits and services.

Question 5. When the party obtained a grant like the one in this case, went into possession, built a house, and occupied within a year, and another person during that occupancy obtained a grant of the same land by representing it vacant, what would be the effect of the last grant, under the usages and customs of California?

(This question objected to by the associate law agent.)

Answer. The second grant could not have any effect. In all cases the oldest title had the preference, unless there was a denouncement, in which case the matter would be tried as I have already stated in other cases.

6th question. In such case, was there notice to the former claimant?

9 Answer. Yes; there was a notice served on the party; which notice consisted in sending the papers containing the denouncement to the other party, that he might appear.

7th question. If the former grantee built a house, inhabited it, and cultivated within a year, and subsequently rented it out to a tenant, without the knowledge of his landlord, applied to the governor, representing the land as vacant and unoccupied by any other person than the tenant, and obtained a grant for the land, what would be the effect of the second grant, under the usages and customs of California regulating the granting of lands?

(Associate law agent objects to this question, as irrelevant to the present case.)

Answer. The original grantee is considered to be the proprietor, and the second grant could have no effect to *to* the prejudice of the first grantee; in such case the matter would be adjudicated according to justice.

JUAN B. ALVARADO.

Sworn to and subscribed before me this 14th day of November, A. D. 1853.

THOMPSON CAMPBELL, *Com'r.*

Filed in office Nov. 14th, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of M. G. Vallejo.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *October* 23*d*, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Mariano G. Vallejo, a witness on behalf of the claimant, Charles White, in case No. 558 on the docket of said board, and said witness being sworn, deposed as follows:

The U. S. associate law agent is present.

Questions by Mr. Howard, for claimant.

1st question. What is your name, age, and residence?

Answer. My name is Mariano G. Vallejo; my age, 47 years; my residence, Sonoma, California.

2d question. Are you acquainted with the rancho of "Arroyo de San Antonia;" if yea, where is it situated? And state what you know of its being granted to any one.

Answer. I am acquainted with said rancho; it is situated in

10 Sonoma county, south of Petaluma; it is the rancho which was

granted to Antonio Ortega by Governor Alvarado; said Ortega applied to me, as director of colonization for the northern frontier, for permission to settle on the land; I granted the permission he asked.

3d question. State what you know of the occupation of said rancho.

Answer. It was, I think, about 1838 or 1839, that said Ortega applied to me for permission to settle there; and immediately after I gave that permission, he moved on to the land, taking with him his father-in-law, Juan Miranda, and his family. He built a house there and a corral, and stocked the place with horses and cattle; I furnished him with stock to stock the place, and he went on to cultivate a portion of the land. He after that obtained a grant from Governor Alvarado about 1840. Ortega, when he placed his father-in-law on the land, was an officer in the army, and was a portion of the time with his command, and went occasionally to his ranch.

4th question. What were your powers, as director of colonization, respecting the granting of lands?

Answer. I had the power to grant to such citizens as asked permission to settle upon the government lands preliminary to their obtaining a title from the governor.

Cross-examined by the U. S. associate law agent.

1st question. Did you ever see the grant in this case?

Answer. I have seen it.

2d question. What description of house was it which Ortega built on said ranch?

Answer. A log house.

3d question. What kind of cultivation did you see on the place?

Answer. There were some 50 or 60 acres of land cultivated in corn, pumpkins, and all kinds of vegetables.

4th question. Under what law and from whom were your powers as director of colonization derived?

Answer. There was a special law creating the office, I think, about the year 1834 or 1833—I am not certain which year; that law fixed the power and duties of that officer.

5th question. Were you ever on said rancho after 1840; and if so, did you see any cultivation there then?

Answer. I was there subsequent to 1840, and saw the cultivation of the land the same as before, principally wheat and corn.

6th question. Was either Ortega or Miranda there on the land subsequent to 1840?

Answer. Yes. I saw them both there after 1840, and Miranda, I think, was still living there.

M. G. VALLEJO.

11 Subscribed and sworn to before me this 23d day of October, A. D. 1854.

PETER LOTT, *Com'r, &c.*

Filed in office Oct. 23d, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of J. P. Leese.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *October* 23*d*, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Jacob P. Leese, a witness on behalf of the claimant, Charles White, in case No. 558 on the docket of said board, and said witness, being sworn, deposed as follows.

The U. S. associate law agent is present.

Questions by Mr. Howard, for claimant.

1st question. What is your name, age, and residence?

Answer. My name is Jacob P. Leese; my age, 45 years; my residence, in Monterey, California.

2d question. Are you acquainted with the Rancho de San Antonio? If yea, state what you know respecting its being granted to any one.

Answer. I am acquainted with said rancho, and about 1844 or 1845, while I was alcalde of Sonoma, Juan Miranda applied to me, as was customary, with his petition for said land. I decreed in his favor, as he was living on the land, and I understood it to be vacant.

3d question. On what information did you report or decree said land to be vacant?

Answer. Upon the allegation to that effect in said Miranda's petition; I had no other information on the subject, except I knew Miranda lived on the land.

4th question. Should you have reported it vacant if you had known that said Miranda was occupying the land for another person?

Answer. Of course I should not, if there was any dispute about it; I should await an investigation till it was ascertained.

5th question. Were you acquainted with the usage and customs of the Mexican government in the granting of lands? If yea, state what would have been done, according to said usage, when a party obtained a grant of land and placed another person on the land to occupy it for him, (said grantee,) and that other person should then himself ask for a grant of the same land.

12 Answer. In such a case the alcalde would have reported that the land was not vacant, and that would have been my report in the case before us; but the fact of the former grant being concealed or contradicted by the petition, I was deceived; and if the grant was obtained from the governor through the deception practised upon the alcalde, that grant would be fraudulently obtained, and would be void.

Cross-examined by U. S. associate law agent.

1st question. Was it usual for an alcalde to report upon the bare petition or assertion of an applicant for land, without further inquiry?

Answer. It was the duty of the alcalde to ascertain as to the occu-

pancy of the land to his satisfaction. In this case I knew that Miranda lived on the land, and supposed he occupied it as his own; I knew nothing of Ortega's grant at that time.

JACOB P. LEESE.

Sworn and subscribed to before me on this 23d day of October, A. D. 1854.

PETER LOTT, *Com'r, &c.*

Filed in office October 23d, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of J. B. Alvarado.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Dec. 7th*, 1854.

This day came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Juan B. Alvarado, a witness on behalf of the claimant, Charles White, in case No. 558 on the docket of said board, and said witness being sworn, deposed in Spanish, which is interpreted by the interpreter to said board, as follows.

The U. S. associate law agent is present.

Questions by Messrs. Crosby and Howard, for claimant.

1st question. What is your name, age, and residence?

Answer. My name is Juan B. Alvarado; my age, 45 years; my residence, Contra Costa county, California.

2d question. Look at the map filed in this case marked "A, P. L.," and the document marked B, P. L., and both made exhibits in this deposition, and state whether they were ever placed in your
13 hands by Antonio Ortega for safe-keeping; if yea, when, and how long?

Answer. In 1840 or 1841 said Ortega brought these two papers to me in Monterey, and left them in my hands, and I kept them for him till about 1848, when he came and asked me for them, and I gave them up to him. I think he wanted to use them for some purpose.

JUAN B. ALVARADO.

Subscribed and sworn to before me on this 7th day of December, A. D. 1854.

PETER LOTT,
Commissioner.

Filed in office Dec. 7th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of José de la Rosa.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Dec. 7th*, 1854.

This day came before Peter Lott, a commissioner for taking testimony to be used before the board of U. S land commissioners in said State, José de la Rosa, a witness on behalf of the claimant, Charles White, in case No. 558 on the docket of said board, and said witness being sworn, deposed in Spanish, which is interpreted by the interpreter to said board, as follows.

The U. S. associate law agent is present.

Questions by Messrs. Crosby and Howard, for claimant.

1st question. What is your name, age, and residence?

Answer. My name is José de la Rosa; my age, 63 years; my residence, in Sonoma, California.

2d question. State what you know, if anything, respecting an application made by Juan Miranda for a grant of land—the place called "San Antonio."

Answer. In 1844 Juan Miranda applied to me in Monterey to draw up a petition for him to the governor, Micheltorena, for the grant of the place called San Antonio. I wrote his petition for him, and he requested me to present it to the governor, which I did, and the governor postponed the making of the grant on account of his being occupied with other business. There was a grant written by one Chavis, a clerk in the secretary's office, but it was never signed on account of the civil disturbances, and the breaking out of the revolution about that time.

3d question. Look at the map filed in this case marked on
14 the envelope "A, P. L.," exhibit to the deposition of José de la Rosa, Dec. 7th, 1854, and state all you know respecting it.

Answer. About the year 1839 Antonio Ortega applied to me in Sonoma to make a map for him of the place called San Antonio, as he wished to apply to Gen. Vallejo for leave to occupy said land; I accordingly made the map for him, and this is the identical map I then made—and according to what I had seen of the land, this is a correct representation of it. I think it contains four sitios de ganado mayor. And afterwards, in 1840, said Ortega got me to write his petition for the grant of said land, directed to Governor Alvarado, and this same map was presented to the governor with said petition. Ortega obtained the permission from Vallejo in 1839 to occupy said land, and he did occupy it, and was in the occupation of it at the time that the petition was presented to Alvarado for the grant; Governor Alvarado granted the land—I saw the grant a short time after the petition was presented. I saw said grant in the house of Ortega, on the ranch of San Antonio.

Cross-examined by U. S. associate law agent.

1st question. Did Governor Micheltorena make any objection to granting the land in question to Miranda on the ground that it had before that time been granted to Ortega?

Answer. No; he made no such objection, but he never signed the title.

2d question. When did you see the title at Ortega's house?

Answer. It was in 1840, the same year that he petitioned for it; I cannot remember the exact time of the year.

3d question. Where did said Ortega live after 1840?

Answer. Ortega went to Oregon, and left his family and Juan Miranda on the land claimed in this case, in order that he (Ortega) might not lose his right to said land.

4th question. Did you see said Ortega's family on said rancho? If yea, when?

Answer. Yes; I saw the family there very often. They always lived there, and I have seen them there for years up to within the last 3 or 4 years.

5th question. Did said family of Ortega ever go to Oregon, and when did he return from Oregon?

Answer. The family never went to Oregon; Ortega went alone, and left his family on the rancho. He came back after the Americans came to this country. I think it was in 1847.

6th question. What is the shape of said rancho of San Antonio?

Answer. The map which has been exhibited here is a correct figure of the land; the lines are irregular; it may be about 1½ league wide, and more than 1½ league in length.

JOSÉ DE LA ROSA.

15 Subscribed and sworn to before me on this 7th day of December, A. D. 1854.

PETER LOTT,
Commissioner.

With the consent of the U. S. associate law agent, the following interrogatory and answer on the part of the claimant are added—same witness:

Question by Mr. Crosby. Look at the document filed in this case marked "C, P. L.," as an exhibit to this deposition, and state whether you signed said instrument as a subscribing witness; if yea, at whose request, and whether you saw it executed?

Answer. Yes, I signed my name here as a witness; I was present at the execution of said deed, and signed it at the request of Antonio Ortega, and I saw him execute said deed at the house of the mission of Sonoma about the time said deed bears date.

JOSÉ DE LA ROSA.

Subscribed and sworn to before me on this 7th day of December, A. D. 1854.

PETER LOTT,
Commissioner.

Filed in office Dec. 7th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of J. Martin.

UNITED STATES LAND COMMISSION,
San Francisco, Jan'y 9th, 1855.

On this day, before Commissioner Alpheus Felch, came John Martin, a witness on behalf of the United States in case No. 558, wherein Charles White is claimant, who, after being duly sworn, deposes as follows:

Questions on the part of the government.

1st question. Please state your name, age, and place of residence.

Answer. My name is John Martin; my age, sixty-seven years; and I reside in Marin county, California; my place is called Novato.

2d question. Do you know the rancho called Arroyo de San Antonio? If yea, how long have you known it?

Answer. I have known that place from 1830 to the present time. In 1832 I had possession of it, from Gen. Vittoria, then governor and general of the country.

3d question. How long did you hold possession? Under what authority did you take it; and in what manner did you occupy the place?

16 Answer. I held it under a paper from General Vittoria, but my writing from him was only a loan of the land, and I delivered up the paper to Juan Miranda, in order for him to get a title from the government. I had possession from 1832 until 1837. I kept my animals on the place. My first establishment was at the place called Botoque, which was on said place. I cultivated land on the place near where I lived. I built a house there in 1832, and lived on it and cultivated the land until 1837. I then took the house away and asked for a title to the land where I now live, called Novato; I got a title of it, and then moved my house on to it.

(Mr. Howard, for claimant, objects to this question and answer.)

4th question. What became of the papers that you had from Vittoria?

Answer. I burned them. They did not belong to any record. It was in 1837 I burned them. I did it so that Juan Miranda might get his title for the land clear of all other claim to it.

5th question. Had Juan Miranda any authority for receiving possession from you at the time you delivered possession to him?

Answer. He had authority from General Vallejo, commandante of the frontier, to take possession of the land, until he could get a grant from the government.

(Mr. Howard objects to the question and answer.)

6th question. What offices did General Vallejo exercise at that time?

Answer. Commandante general and director of the frontier.

7th question. In what manner did Miranda take possession of said rancho?

Answer. By putting his sons to live on it, with his animals and mares.

8th question. How did his son occupy said rancho?

Answer. He lived on it and cultivated the land, and kept his cattle there. He built a house of sticks, in which he lived. There was no way of building any other house in those times.

9th question. How long did he live there?

Answer. He lived there some time before he was married. He then married and lived on the same place with his family. He lived there until it was sold to Mr. Valentine. He had some cattle there; I suppose about forty or fifty head.

10th question. What position did Juan Miranda hold?

Answer. He was steward of the mission at Sonoma, under Father Ventura, from 1830 up to 1837.

11th question. Did Miranda hold any other rancho besides this?

Answer. He did not.

12th question. Did you know Antonio Ortega?

Answer. I knew him since he came with the colony under Hijar, from Mexico, about 1834 or 1835.

17 13th question. When and where did they settle?

Answer. They settled near the Blue mountain, at the other side of Napa creek. They settled there in 1834 or 1835.

14th question. How long did Ortega remain there?

Answer. About one year. He then went to the mission at Sonoma, and acted as keeper of the keys.

15th question. Had you delivered the possession of the rancho to Miranda before Ortega went to the mission?

Answer. I did not deliver it to him until afterwards.

16th question. When did Ortega marry, and to whom?

Answer. He married Mary Francisca Miranda, daughter of Juan Miranda. He was married in 1838 at the mission Dolores.

17th question. Had you delivered possession of the rancho to Miranda before Ortega was married?

Answer. I delivered it before he was married, about a year or two years before.

18th question. Where did Ortega reside after he was married?

Answer. In the mission at Sonoma; I never knew him to reside at any other place until he went to the Columbia river, which I think was in 1840. He then parted from his wife, and left her at the mission. He parted from her to the present day, and has never lived with her since.

19th question. How long did he remain absent?

Answer. About four or five years. He returned about the time the American flag was raised.

20th question. On whose account did Miranda take possession of the rancho?

Answer. On his own and that of his family, I suppose.

21st question. On whose account did Theodore Miranda hold possession of said rancho?

Answer. On account of his father, Juan Miranda.

22d question. Was the possession or title of *the* Miranda ever questioned prior to the American occupation of the country?

Answer. I cannot tell.

23d question. Did Miranda continue in possession?

Answer. He continued in possession until the sheriff's sale; I mean the sale to Mr. Valentine.

24th question. Whose title to the land was recognised by the neighborhood and the colindantes?

Answer. We do not know any other one than Juan Miranda; the colindantes did not know any other.

(Howard objects to this question and answer.)

25th question. By what name is the rancho known?

Answer. By the name of the rancho San Antonio Brook.

18 *Questions by Mr. Howard, for claimant.*

1st question. When did you leave said rancho?

Answer. In 1837.

2d question. Where did Juan Miranda reside?

Answer. He resided at Sonoma, until about two or three years ago; he died at San Rafael, but was living there only a few months before his death. He died after the American war; he left a widow, and she died about two years ago at San Rafael. Teodoro lived on the rancho, and his mother was off and on the rancho with her children, but never lived there. Juan Miranda went sometimes to the rancho back and forward, but he never lived there. Theodore was the only one that lived constantly on the farm; Mariano was sometimes there, but was a wild boy.

his
JOHN + MARTIN.
mark.

Subscribed and sworn to before me this ninth day of January, 1855.

ALPHEUS FELCH,
Commissioner.

Filed in office Jan. 9, 1855.
(Signed) GEO. FISHER, *Secr'y.*

Order of revival.

U. S. LAND COMMISSION.

Charles White, claimant.—"Arroyo de San Antonio."

On motion of claimant's counsel, it is ordered by the board that this case be revived in the name of Ellen E. White, administratrix of Charles White, dec'd.

Filed in office Jan. 2d, 1855.
(Signed) GEO. FISHER, *Secr'y.*

Doc. H H No. 1, *annexed to dep. of L. A. D. de Ortega, taken before Comm'r H. Hall.—B. P. L. exhibit to depo. of Juan B. Alvarado, Dec. 7th,* 1854.

Ex'mo Sor. Gobernador:

Antonio Ortega, ciud'no Mejicano y cuecindado en Sonoma, frontera del norte; à S. E., con lo mas debida forma hajo presente q. descando dedicarme al interesante ramo de la agricultura y principaleria de ganado de todas especies como el quien de q. à la vez se ocupan todos los habitantes de esta frontera he de me recer de V. E. q. se sirva concederme conforme a sus facultades el terreno conocido con el nombre de el Arroyo de Sn. Antonio, colindando por el sur con el Rancho de Camilo, por el norte con el roblar de la Miseria, por el este con el estero de Petaluma y por el oeste con la laguna
19 de San Antonio, este terreno es valdio; no pertenece à la propiedad de individuo, corporacion ò pueblo.

Por tanto de la acreditada justificacion de Sr. E. espero resultado mas favorable juro no ser de malicia y lo necessario dispensando el uso de papel comun pr. haveo de sello que corresponde.

Sonoma, Junio 12, de 1840.

ANTONIO ORTEGA.

MONTEREY, *Junio* 20, *de* 1840.

Informé el Sr. com'te militar de la frontera de Sonoma si el interesado en este representacion tiene los requisitos necesarios pa. ser atendido en su solicitud si el terrèno que pretende es baldio y si pertenece à la propiedad de algun individuo corporacion ò pueblo con todo lo demas que esta conveniente informar.

Asi yo Juan B. Alvarado, gob'r del departm'to de las Californias, lo decretè mande y firmé.

ALVARDO.

SONOMA, *Julio* 30, *de* 1840.

De conformidad con el decreto que antecede del E. V., gobernador del departamento debo informar que el interesado en esta instancia tiene los requisitos para ser atendido en su solicitud y que el terreno que pretende no pertenece à propiedad particular ni corp'o.

M. G. VALLEJO.

MONTEREY, *Ag'o* 10, *de* 1840.

De conformidad con lo informado por el Sor. command'te militar de la frontera de Sonoma, y en virtud de las facultades con que me hallo investido, concedo, a Dn. Antonio Ortega, el terreno solicitado en la intelligencia de que para expeditar el titulo respectivo y arreglar el espediente necessario por el cual se deven demarc'n los linderos y corre los tramites necessarios cebantaro el plano diseño prevenido por la ley el mismo que presentara oportunamente con este instancia

lo que se le devuelve pa. q. le servia de resguardo durante los demas operaciones medidas.

ALVARADO.

Filed in office March 25th, 1853.

GEO. FISHER, *Sec'ry.*

(Here follows map—original, page 19.)

Most Excellent Governor:

Antonio Ortega, a Mexican citizen and resident of Sonoma, frontier of the north, presents himself before your excellency in the best form he can, and says that, desiring to dedicate himself to that interesting branch of agriculture, and principally to the raising of cattle of all species, as are all the inhabitants of this frontier at present occupied, I have to beg your excellency will be pleased to grant me, in conformity with yonr faculties, the land named the Arroyo de San Antonio, bounded on the south with the rancho of Camilo; on the north with the oak grove of the Miseria; on the east with the estero of Petaluma, and on the west with the laguna of San Antonio. Said land is vacant; it does not belong to the property of any individual, corporation or pueblo.

For which, from the accredited justice of your excellency, I hope for the most favorable results, swearing it is not in malice, but what is necessary. Permitting the use of common paper, for want of corresponding sealed paper.

(Signed) ANTONIO ORTEGA.

Sonoma, June 12th, 1840.

Marginal Decree.

MONTEREY, *June 20th*, 1840.

The military commander of the frontier of Sonoma will inform me if the petitioner in this representation has the necessary requisites to be attended to in his petition; if the land which he claims is vacant, and if it belongs to the property of any individual, corporation or pueblo, with all the rest which you may believe is necessary to inform me.

Juan B. Alvardo, governor of the departments of the Californias, decrees and signs.

(Signed) ALVARADO.

SONOMA, *July 30th*, 1840.

In conformity with the foregoing decree of his excellency, the governor of this department, I must inform that the petitioner, in this instance, has the necessary requisites to be attended to in his petition, and the land which he claims does not belong to any individual, corporation or pueblo.

(Signed) M. G. VALLEJO.

MONTEREY, *August* 10*th*, 1840.

In conformity with the information given by the military commander of the frontier of Sonoma, and in virtue of the faculties
21 with which I am invested, I grant to Don Antonio Ortega the land petitioned for, with the understanding that, to expedite the respective title and to regulate the necessary documents by which he shall mark out the lines and perform those necessary acts, he shall make a map, as required by law, which he will present opportunely.

This decree shall be returned to him, that it may serve him as a security during the other operations indicated.

(Signed) ALVARADO.

Filed in office February 7, 1853.

(Signed) GEO. FISHER, *Sec'y*.

Deed.—Ortega to Brouillet.

This indenture, made and concluded this first day of March, in the year of our Lord one thousand eight hundred and forty-nine, between Antonio Ortega, of Sonoma, in the district of Sonoma, northern department of Upper California, of the one part, and John the Baptist Abraham Brouillet, of San Francisco, on the other part, witnesseth: That the said Antonio Ortega, for and in consideration of the sum of one dollar, well and truly paid at or before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, hath bargained, granted, sold, transferred, and conveyed, and by these presents doth bargain, grant, sell, transfer, and convey unto the said John the Baptist Abraham Brouillet, his heirs or assigns forever, all his right, title, and interest of, in and to all that certain lot of land situated and being in the district aforesaid, and known and described as follows: The ground known as the Arroyo de San Antonio, *bound* on the south by the rancho de Camilo; on the north by the oak grove of Miseria; on the east by the estero de Petaluma, and on the west by the laguna of San Antonio, with the exception of one square league, which the said Ant'o Ortega reserves to himself, the situation and boundaries of which to be hereafter defined by mutual agreement of the parties; to have and to hold, all and singular, the above-bounded and described lot of ground as aforesaid, together with all the rights, profits, privileges, and appurtenances whatsoever, thereunto belonging, as fully as the same was held and possessed by the said Ortega as aforesaid, unto the said John the Baptist Abraham Brouillet, for himself, his heirs and assigns, to the only proper use, benefit, and behoof, forever.

And the said Antonio Ortega, for himself, his heirs and assigns, doth hereby covenant to and with the said John the Baptist Abraham Brouillet, his heirs and assigns, to warrant and promise to defend the title to the said granted and bargained premises from the lawful claim and demand of any person or persons whatever claiming or to claim the same.

22 In witness whereof the said Antonio Ortega has hereunto set his hand and seal the day and date above mentioned.

ANTONIO ORTEGA.

Attest:
W. H. HENRIE.
JOSÉ DE LA ROSA.

TERRITORY OF CALIFORNIA, *District of Sonoma:*

Personally appeared before me, the undersigned, alcalde of said district, Antonio Ortega, who is known to me to be the person whose name is subscribed to the foregoing deed, as having executed the same and acknowledged the same to be his act and deed for the purposes therein mentioned.

Given under my hand at office, in Sonoma, this first day of May, A. D. 1849.

L. W. BOGGS.

Filed in office Dec. 2d, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Deed 2—White.

Know all men by these presents, that I, John Baptist Brouillet, of Columbia city, in the territory of Oregon, for and in consideration of the sum of five thousand dollars ($5,000), of which five hundred ($500) dollars have been paid, and the balance to be paid in the following successive years, at one thousand six hundred ($1,600) dollars each year, by Charles White, of pueblo Sn. José, in California, have this day bargained, sold, released, remised, and quit-claimed, and by these presents do hereby bargain, sell, remise, and quit-claim, unto the said Charles White, his heirs, executors, administrators and assigns, forever, all my right, title, interest, estate, claim, property, and demand whatsoever, both at law and in equity, and as well in possession as in expectancy, of, on, and to the rancho known by the name of the Arroyo de San Antonio, lying in the county of Sonoma, State of California, being bounded as follows, to wit: on the north by the oak grove of the Miseria; on the east by the estero of Petaluma; on the south by the rancho of Camilo; and on the west by the laguna of San Antonio; with all and singular the hereditaments and appurtenances, pieces, parcels, and lots of land thereunto belonging, free from all incumbrances caused or permitted by me, or my heirs, executors, or administrators, and free from the title, right, or claim of any and all other person or persons whatsoever, claiming by, through, or under me, my heirs, executors, administrators, or assigns, but not against any other claim, demand, or title.

In testimony whereof, I, the aforesaid John Baptist Brouillet,
23 have hereunto set my hand and seal, this 19th day of January, A. D. 1833, in Oregon City, Oregon Territory.

J. B. A. BROUILLET.

Signed, sealed, and delivered in the presence of—
MICHAEL L. ACCOLTI,
B. DELORME,
G. LE CLAIRE.

STATE OF CALIFORNIA,
Santa Clara county, ss:

On this twenty-ninth day of August, A. D. one thousand eight hundred and fifty-three, came personally before me, recorder in and for the said county, Michael L. Accolti, to me personally known to be the person whose name is subscribed to the foregoing conveyance as a witness thereto, and who, being by me duly sworn, doth, on his oath, declare, that he is the identical Michael L. Accolti whose name appears as a witness to the foregoing conveyance; and that he signed his name thereto as a witness at the request of J. B. A. Brouillet, whose name is subscribed to the said conveyance; and that the said J. B. A. Brouillet executed the said deed of conveyance freely and voluntarily, and for the uses and purposes therein mentioned, and for the consideration therein appearing.

Given under my hand and private seal (having as yet no official seal provided) the day and year last before written.

[L S.] J. M. MURPHY,
County Recorder,
By F. LEWIS, *Deputy.*

Filed in office Dec. 5th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Conveyance.

This indenture, made and entered into on the fifteenth day of November, A. D. eighteen hundred fifty-two, by and between Antonio Ortega, of the county of Contra Costa, State of California, of the first part, and Charles White, of the city of San José, State of California, of the second part, witnesseth: that the parties of the first part, for and in consideration of the sum of five thousand five hundred dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained, sold and conveyed, and by these presents doth bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, all that tract or parcel of land lying and being in the county of Sonoma, State of California, being known as the rancho of the arroyo of San Antonio, being bounded on the
24 north by the oak grove of the Miseria, on the east by the estero of Petalúma, on the south with the rancho of Camila, and on the west by the laguna of San Antonio, and containing three leagues, more or less; to have and to hold the aforesaid tract or parcel of land, with all the rights and privileges thereunto belonging, together with all rights in houses, woods, ways, waters, or other things thereon, to the said party of the second part, his heirs and assigns forever.

In witness whereof, the party of the first part hath hereunto set his hand and seal the day and year first above written.

LEONIDIO DUQUE Y ORTEGA. [SEAL.]

JOSÉ PENA.
W. R. BUCKLEY.
ANTO. PENA.

STATE OF CALIFORNIA,
County of Santa Clara, ss:

On this twenty-fourth day of November, eighteen hundred and fifty-two, personally appeared before me, a notary public in and for said county, William R. Buckley, subscribing witness to the foregoing instrument, personally known to me to be the person whose name is subscribed to the foregoing conveyance as a witness thereto, and made oath that he personally knows the said Leonidio Duque y Ortega, who executed the foregoing instrument; that he saw him sign his name thereto, and heard him acknowledge the same as his act and deed; and that he the said William R. Buckley, subscribed his name thereto as a witness, in the presence of said Ortega.

In testimony whereof, I have hereunto set my hand and affixed my [SEAL.] official seal at office, in the city of San José, on this 24th day of November, 1852.

WILLIAM L. SMITH,
Notary Public.

Filed in office Dec. 2d, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Affidavit and motion of the U. S. Law Agent.

558.—Charles White, claimant.

J. H. McKune, U. S. law agent, says, on oath, that when the above-entitled case was submitted, that he was not present at the session of this board next before it was submitted.

The claimant's attorney announced that the case was ready for submission, and affiant, on behalf of government, stated that he was not ready, and desired that the depositions of two witnesses might be taken before submission.

25 A subpœna had previously been issued for Francisco Miranda and Teodoro Miranda, and they were produced as witnesses after the submission of the case, according to an oral understanding with V. E. Howard that the depositions should be taken and used in the case without it being restored to the docket; but when the witnesses were produced, the attorneys for claimant neglected to appear for cross-examination, though notified verbally that we should proceed to take the depositions.

Affiant refers to the depositions of said witnesses herewith presented, and says he expects to prove the facts therein stated, if the case is restored to the docket.

J. H. McKUNE.

Subscribed and sworn to before me, April 24th, 1855.
R. AUG. THOMPSON, *Com'r.*

Motion is made to restore the above case to the docket.

J. H. McKUNE,
U. S. Law Agent.

Filed in office April 24th, 1855.
(Signed) GEO. FISHER, *Sec'y.*

The opinion of the board, delivered by Com'r R. Aug. Thompson.

ELLEN E. WHITE, administratrix of CHARLES WHITE, dec'd, *vs.* THE UNITED STATES. } No. 558.—Arroyo de San Antonio.

The petitioner in this case has offered in evidence an original espediente, containing—

First. The petition of Antonio Ortega to the governor for a grant of the lands claimed, describing them by well-defined metes and bounds, dated June 12th, 1840.

Second. A marginal decree by Gov'r Alvarado, referring the same to the military commandant of the frontier of Sonoma, for his report as to the qualifications of the petitioner and the capacity of the land to be granted.

Third. The report of that officer, setting out that the party possessed the necessary requisites to be attended to, and that the lands were vacant.

Fourth. A decree of concession by the governor, dated August 10th, 1840, in which he declares that, by virtue of the faculties with which he is invested, he grants to Don Antonio Ortega the land petitioned for, with the understanding that, to expedite the respective title and to regulate the proper documents by which the boundaries shall be marked out and the necessary proceedings completed, he shall
26 make out a map, as required by the laws, which he shall present at the proper time, and directs the decree to be delivered to him for his security in the meantime.

The genuineness of these documents and of the respective signatures attached to them is fully proved. It also appears that they were duly delivered to the grantee, who some time afterwards presented them to the governor at Monterey, accompanied by the map or diseño, with a view of having the title perfected by the issuing of the formal grant; but in consequence of the assembly not being in session, they were not acted on at the time, and Ortega subsequently left the country for Oregon, leaving his papers in the hands of the governor. It is also proved that Ortega never occupied the land personally, but it was occupied for him by the family of his father-in-law, Juan Miranda, who, according to the evidence of Gen. Vallejo, went on the land in the year 1849 or '40, under a provisional right of settlement, granted by him, as director of colonization, to the said Ortega. He built a house on the land, stocked it with horses and cattle, and had a portion of it in cultivation.

Ortega was absent in Oregon about four years; and during his absence Miranda applied to Governor Micheltorena for a grant of the land in his own name, but no title was ever issued to him. The son of Juan Miranda continued to occupy the land until the return of Ortega from Oregon. After his return from Oregon, Ortega claimed the land, and procured his title-papers from Governor Alvarado, for the purpose of asserting his rights to it. He, however, took no further steps in the matter, and subsequently conveyed all his interest in the

premises to the parties through whom the present petitioner derives her title.

Taking the whole testimony in this case, we do not think it establishes a very strong equity in favor of the grantee; but according to the ruling of the commission in similar cases, the provisional grant by Alvarado, delivered to the party at the time it was made, accompanied by evidence of a performance of the actual conditions attached to colonization grants, would give to the grantee an equitable title to the land, which the Mexican government would be bound in good conscience to perfect; this would bring it within that class of titles which are protected by the treaty of cession, and would consequently entitle the grantee to a patent from the United States It is clear, from the testimony, that Miranda originally entered and held under the grant to Ortega; his subsequent attempt to obtain a grant to himself was clearly in fraud of the rights of his landlord, and would not operate in derogation of his title.

The occupation and cultivation by Miranda must be considered as the acts of Ortega, under whose authority they were performed. They thus constitute a full compliance with the conditions of the grant, and establish his equitable right to a confirmation.

All his interest in the premises has been transferred by proper legal conveyance to the husband of the present claimant, in whose
27 favor, as his legal representative, a decree of confirmation will be entered.

Filed in office June 26th, 1855.

GEO. FISHER, *Sec'y.*

Decree of Confirmation.

THE ADMINISTRATRIX OF CHARLES WHITE, dec'd
vs.
THE UNITED STATES. } No. 558.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid; and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is situated in the county of Sonoma, and is known by the name of Arroyo de San Antonio, being the same which was granted by Governor Alvarado to Antonio Ortega on the 10th of August, 1840, and is bounded as follows: On the south by the ranch of Camilo, on the north by the roblar de la Miseria, on the east by the estero de Petaluma, and on the west by the laguna de San Antonio, containing about four square leagues.

For a more particular description, reference to be had to the original espediente and map, filed among the papers in the case.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office June 26th, 1855.
(Signed) GEO. FISHER, *Sec'y.*

Order.

And it appearing, to the satisfaction of this board, that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and of the decisions in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing fifty-three pages, numbered from
28 1 to 53, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 558 on the docket of the said board, wherein Charles White is the claimant against the United States for the place known by the name of San Antonio.

In testimony whereof I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, Califor-
[SEAL.] nia, this twenty-first day of November, A. D. 1855, and of the independence of the United States of America the eightieth.

(Signed) GEO. FISHER, *Sec'y.*

Notice of Appeal.

558.—"San Antonio."—Charles White, claimant.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 31 *Dec.*, 1855.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day of December, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Endorsed: Filed Feb'y 11, 1856.

By CHEVERS, *Deputy.*

Notice.

In the District Court of the United States, in and for the northern district of Cal'a.

THE UNITED STATES *vs.* ELLEN E. WHITE *et als.*, heirs of CHARLES WHITE, dec'd. } No. 558.—Before the U. S. land com., and now pending in said dist. court.

To VOLNEY E. HOWARD, Esq.:

SIR: You will please take notice that on Tuesday next, the 29th inst., at 11 o'clock in the forenoon of that day, before George P. Johnston, U. S. commissioner, at the office of the said Johnston, I shall proceed to take the depositions of John Martin, Teodoro Miranda, Francisca Ortega, Joel Walker, ——— Campbell, and others, to be used as evidence in the above cause on the part of the United States. Your attendance (you being counsel and attorney for the said appellees) is requested at the time and place specified.

29

Respectfully yours, &c.,

A. GLASSELL,
Ass't U. S. Att'y.

San Francisco, April 22, 1856.

Endorsed: I hereby acknowledge due service, by copy, of the within notice.
April 22d, 1856.

V. E. HOWARD

Deposition of José Ramon Mesa.

UNITED STATES DISTRICT COURT,
Northern district of Cal'a.

SAN FRANCISCO, *April* 29, 1856.

On this day, before me, Geo. Pen Johnston, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came José Ramon Mesa and Francisca Miranda, witnesses produced on behalf of the United States in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 558 on the docket of the board of commissioners, and were duly sworn, and testified as follows, their evidence being interpreted by Clinton Palmer, a sworn interpreter.

Present: A. Glassell, acting U. S. dist. att'y, on behalf of the United States, and E. L. Goold, esq., by request of V. E. Howard, esq., on behalf of claimant and appellee.

Questions by the Acting Dist. Att'y.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is José Ramon Mesa; I am thirty-two years of age; and I live in Marion co., California.

Question 2. Do you know the rancho "Arroyo de San Antonio," in Sonoma county, claimed in this case; if yea, how long have you known it?

Answer 2. I do know the rancho "Arroyo de San Antonio," and have known it ever since I was fourteen years of age.

Question 3. By whom, if by any one, was said rancho claimed and occupied?

Answer 3. It was claimed and occupied by Juan Miranda.

Question 4. From what time did Juan Miranda occupy that rancho?

Answer 4. He occupied it nineteen or twenty years ago.

Question 5. How, or in what manner did Juan Miranda occupy that rancho?

Answer 5. He first occupied it by consent of Mariano G. Vallejo; he occupied it by putting about three hundred head of cattle on it, about thirty wild mares, and some tame horses; he built a house and a corral, and cultivated a portion of the land near the house.

Question 6. Were you acquainted with Juan Miranda?

Answer 6. I knew him well; he raised me.

Question 7. To whom did the property which you have mentioned as being on said rancho belong?

Answer 7. The property belonged to Juan Miranda.

Question 8. Do you know Leonito Antonio Duque de Ortega; if yea, how long have you known him?

Answer 8. I do know said Ortega, and have known him ever since he arrived in this country from Mexico.

Question 9. Did the said Ortega ever at any time live on and occupy the said rancho "Arroyo de San Antonio?"

Answer 9. He never did.

Question 10. What were the circumstances, or what was the condition of the said Ortega, as to money matters or property?

Answer 10. I never knew him to have any money or other property, except one horse; he was a poor man; a sort of overseer. I never knew him to have but one horse.

Question 11. To whom, by general report and reputation among all the neighbors, did the said "Rancho de San Antonio belong?"

(The attorney for the claimant objects to this interrogatory on the ground that it is hearsay evidence, and that it tends to the introduction of parole evidence to prove a title.)

Answer 11. Everybody knew it as belonging to Juan Miranda.

Cross-examination.—Questions by the Att'y for Claimant.

Question 12. How do you know that all the cattle and other property on said rancho belonged to Juan Miranda?

Answer 12. When Juan Miranda went to settle on the rancho, he took those cattle from the mission to the rancho; Miranda had been working on the mission for some years, and the cattle were given to him in pay for his labor. I saw the cattle delivered to Miranda (by the consent of Don Mariano G. Vallejo) by Salvador Vallejo, and I saw them branded by Miranda with his brand, which he had made at a blacksmith's shop.

Question 13. How do you know that Salvador Vallejo had the consent of Mariano G. Vallejo to deliver the cattle to Miranda?

31 Answer 13. At the time the cattle were vented and branded, Mariano G. Vallejo was present, as also Salvador Vallejo and Juan Miranda, and I heard the conversation between them. I cannot now repeat the conversation, but I gathered from what was said that the cattle were delivered by the consent of M. G. Vallejo.

Question 14. How do you know the rancho de San Antonio belonged to Miranda?

Answer 14. I know that Miranda first occupied the rancho by the provisional consent of M. G. Vallejo, for the purpose of afterwards applying to the Mexican government for a title to it.

Question 15. Is this last the only way that you know the rancho belonged to Juan Miranda?

Answer 15. This last is the only way whereby I knew the rancho belonged to Juan Miranda.

Question 16. Who first spoke to you about coming here to give your testimony in this case?

Answer 16. Mr. Heintzleman first spoke to me about my coming here to give my testimony in this case.

Question 17. Did not Mr. Lusk, who is now present, first ask you to come here?

Answer 17. Mr. Lusk and Mr. Singley first spoke to me, and Mr. Heintzleman afterwards; Mr. Lusk and Mr. Singley told me Mr. Heintzleman was the party interested in the case; they applied to me for him.

Question 18. Do Mr. Lusk or Mr. Singley, or does either of them, occupy a portion of this rancho?

Answer 18. I do not know whether they or either of them do, or not.

his
JOSÉ RAMON + MESA.
mark.

Sworn to and subscribed before me, this 29th day of April, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Francisca Miranda.

Francisca Miranda, being duly sworn, deposes and says as follows, her evidence being interpreted by Clinton Palmer, the said sworn interpreter in this case.

Present: the same parties as in the foregoing deposition.

Questions by Acting U. S. Attorney.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is Francisca Miranda; I don't know my age; I live in Petaluma, Cal'a.

32 Question 2. Are you acquainted with Leonito Antonio Duque de Ortega?

Answer 2. Yes, I know him; I am his wife.

Question 3 How long has it been since you were married to the said Ortega?

Answer 3. I do not know; I was married to him a long time before he went to Oregon.

Question 4. Do you know the rancho Arroyo de San Antonio, upon which Juan Miranda lived?

Answer 4. Yes, I know it.

Question 5. Did your husband ever have or claim any right, title, or interest, in the said rancho?

Answer 5. No, he never did.

Question 6. Who occupied that rancho, and in what manner was it occupied?

Answer 6. It was occupied by my father, Juan Miranda, by having on it a house, horses, cattle, and cultivation.

Question 7. Did you ever visit this rancho while thus occupied?

Answer 7. I was on it while my father was on it; I lived there with him; after my husband went to Oregon, I had nowhere else to go, and was compelled to return to him.

Question 8. Did your husband ever pretend that Juan Miranda, or your brother, occupied the said rancho as tenants or agents for him before he went to Oregon?

Answer 8. He never did pretend that they occupied it for him as his agents or tenants before he went to Oregon; they occupied it in their own right.

Question 9. Did your husband possess any property, and what was his occupation and means of livelihood?

Answer 9. He had no property, and no regular business; he made his living by working whenever he could get anything to do.

Question 10. Had he any family besides yourself, and did he make any provision for you and them during his absence in Oregon?

Answer 10. He had two children when he went to Oregon, and left me enceinte at the time; he made no provision for them whatever.

Question 11. Where did your husband live before he went to Oregon?

Answer 11. He was living at the house of John Reed, in San Rafael, near Sancilito.

Cross-examination.—Questions by the Att'y for Claimant.

Question 12. How did your father and brother get the title to the rancho, which you say they occupied in their own right?

Question 12. They first obtained their right from Mariano Vallejo; my father went to Monterey for the purpose of obtaining a
33 title from the general government, but in consequence of being taken sick he was unable to attend to it, and came away, leaving the papers in the hands of Salvador Vallejo; that Don Salvador Vallejo said he had sent the title to that rancho by Don Manuel Vaca, but the title was never received by my father.

Question 13. How many times, before your husband abandoned you, did you and he quarrel?

(Objected to by the att'y for U. S. as irrelevant.)

Answer 13. I never quarrelled with him, but he did with me.

Question 14. Before leaving you, did he not charge you with inconstancy?

(Objected to by the att'y for U. S. as irrelevant.)

Answer 14. He never did accuse me; he was the guilty one.

Question 15. Have you been divorced from him or legally separated?

Answer 15. After his return from Oregon, he charged me before an American, who was represented to me as the governor of the State of California, with having a man; I appeared with my witnesses; and he appeared, but had no witnesses, and the matter was dropped.

Question 16. Since your husband abandoned you, have you had any children, and how many?

(Objected to by the att'y for U. S. as irrelevant.)

Answer 16. Since my husband abandoned me I have had three children, besides the one with which I was enceinte when he left.

Question 17. Since your husband left you and went to Oregon, have you ever lived with him?

Answer 17. I never have.

her
FRANCISCA + MIRANDA.
mark.

Sworn to and subscribed before me, this 29th day of April, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination of remainder of witnesses in the aforesaid case adjourned until to-morrow, at 11 o'clock a. m.

GEO. PEN JOHNSTON,
U. S. Comm'r.

Deposition of José S. Berreyesa.

SAN FRANCISCO, *April* 30, 1856.

Examination of witnesses resumed in aforesaid cause. José S. Berreyesa, a witness on behalf of the United States, being duly sworn, deposes and says, as follows; his evidence being interpreted by Clinton Palmer, a sworn interpreter.

34 Present: the acting U. S. dist. att'y on behalf of U. S.; E. L. Goold, esq., appearing, by request of V. E. Howard, esq., for claimant.

Questions by Acting U. S. Dist. Att'y.

Question 1. What is your name, age, and place of residence?

Answer 1. My name is José S. Berreyesa; I am thirty-seven years of age; and I live at Martinez, Contra Costa county, California.

Question 2. Are you acquainted with the handwriting of Jacob P. Leese, Governor Micheltorena, and Manuel Jimeno? If yea, state your means of knowledge.

Answer 2. I am acquainted with the handwriting of Jacob P. Leese, Governor Micheltorena, and Manuel Jimeno; I became so acquainted with their handwriting from having seen them write frequently, while in their respective official positions.

Question 3. A document is here shown to the witness, from the office of the U. S. surveyor general for the State of California, entitled "Espediente promovido por el ciudadano, Juan Miranda en solicitud del el terreno nombrado arroyo de San Antonio, No. 397." Look at the document now shown you, and state whether or not the signatures of the said Leese, Micheltorena, and Jimeno, where they occur in and upon said document, are their true and genuine signatures?

Answer 3. I have examined the document, and, according to the best of my knowledge and belief, the signatures of Leese, Micheltorena, and Jimeno, where they occur, in and upon said document, are their true and genuine signatures.

Question 4. State, if you know, in whose handwriting is the petition signed Jn. Miranda, which appears on the second page of the document shown you.

Answer 4. The said petition is in the handwriting of Joaquin Peña; I know his handwriting from having seen him write frequently.

Question 5. State, if you know, in whose handwriting that portion of the document shown you is, purporting to be a grant, on pages 5 and 6, and also on the last two pages of said document, on which there is any writing.

Answer 5. I believe the handwriting on the pages referred to is that of Francisco Arce; I have often seen him write in the offices of state at Monterey.

Another document is here shown the witness, being the original title-paper, a copy of which is contained in the transcript; said document being obtained from the archives of the U. S. land commission, now in possession of the U. S. surveyor general for the State of California, marked "Doc. H H No. 1, annexed to the deposition of L. A. D. de Ortega, taken before Com'r Hiland Hall."

35 Question 6. Look at the document now shown you, and state, if you know, in whose handwriting is the petition dated June 12, 1840, and signed Antonio Ortega, or so much thereof as occurs after the words "Antonio Ortega, ciud'no?"

Answer 6. The handwriting after the words last mentioned is that of José de la Rosa; the words mentioned, written in pale ink, are in a handwriting unknown to me.

Question 7. Are you acquainted with the rancho "Arroyo de San Antonio," in Sonoma county? If yea, how long have you known it?

Answer 7. I am acquainted with the rancho "Arroyo de San Antonio." I lived in Sonoma county from the year 1837 to the year 1849, and have known the rancho since the year 1837.

Question 8. During the time that you lived in Sonoma, by whom was the said rancho claimed and occupied, if by any one?

Answer. 8. During that time I never knew that rancho claimed by anybody but Juan Miranda, and never knew it occupied by anybody but Juan Miranda and his family.

Question 9. When did Juan Miranda first occupy that rancho?

Answer 9. I am not exactly certain, but I think he first occupied it in 1839.

Question 10. Can you state certainly whether he occupied it previous to 1840?

Answer 10. He certainly did occupy the rancho previous to the year 1840.

Question 11. In what manner was the said rancho occupied by Juan Miranda and family?

Answer 11. He occupied it by building a house on it. One of his married sons resided there permanently. They had a house, a corral, and some cattle on it, and cultivated some of the land. Juan Miranda went and came; not remaining there continuously, as his son did.

Question 12. Is Juan Miranda living or dead?

Answer 12. He is dead; I believe he died in 1845.

Question 13. Are you acquainted with Antonio Ortego? If yea, how long have you known him?

Answer 13. I am acquainted with him; I have known him ever since 1841.

Question 14. What were the circumstances of Antonio Ortega as regards money or other property?

Answer 14. Ortega, at the time I knew him, lived in a house in the city of Sonoma, and kept a little liquor store there; he cultivated some land, but it was not his. I did not know him to have any other property; the house was his, but he afterwards sold it.

JOSÉ S. BERREYESA.

36 Sworn to and subscribed before me this 30th day of April, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Endorsed: Filed May 1, 1856.

CHEVERS, *Deputy.*

Certified copy of espediente No. 397, referred to in deposition of J. S. Berreyesa.

1844.

Espediente promovido por el ciudadano Juan Miranda, en solicitud del *del* terreno nombrado Arroyo de San Antonio.

No. 397.

Sello Cuarto, Dos Reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro, y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.]

S'or Alcalde 1o *de Sonoma:*

Juan Miranda, vecino y radicado en la jurisdiccion de Sonoma, haute V. con el respeto qe. debe, hase presente, qe. hase moy de cuatro años qe. se halla poseyendo un sitio en el Arroyo de S. Antonio, al qe. le frie concedido provicionalm'te por el S'or Don Guadalupe Vallejo, cuyo papeles, para la pretencion, parece se hase tras papelado, qe. aun que las ha reclamado no han parecido pr. cuyo motivo representa de nuevo, deciendo q. en otro sitio mantiene una n'o regulas de ganado caballada y siembras.

Por tanto suplica à V. se sirva qe. se corran los tramites de estilo pa. pedir el titulo de otro rancho pues solicita tres sitios segun demarca el adjunto diceño, en todo lo qe. queda vá reconocido.

Sonoma, F'bro 21 de 1844.

J'N MIRANDA.

Certifico qe. el terro qe se solicita esta ocupado algunos años por el enteresado y no pertenece à pueblo ne corporacion alg'a Sonoma, Feb'o 20 de 1844.

JACOB P. LEESE.

37 MONTERREY, *Ab'l* 30 *de* 1844.

Ynf'e el s. s'rio del despacho.

MICHELTORENA.

S'or Gobernador:

El interesado hace cuatro años que tiene ocupado el terreno que pretende, con casa, Lavores y todos sus bienes, pues nunca há pertenecido à particular alguno el d'ho terreno segun manifesta el juez de Sonoma, pr. cuyo motivo y por ser el pretendiente un hombre honrado y cargado de familia se hace acredor, para que V. E. se digne concederle su solicitud, se asi lo tunize por conveniente.

Monterey, Mayo 2 de 1844.

MAN'L JIMENO.

MONTERREY, *Mayo* 3 *de* 1844.

Espidase el titulo. MICHELTORENA.

MONTERREY, *Octubre ocho de* 1844.

Vista la peticion con que da principio este espediente, las informes que preceder con toda lo demas que se tuvo presente, y deber convino de conformidad con las leyes y reglamentos de la materia, declaro á D. Juan Miranda dueño, en propriedad del parage conocido con el nombre de Arroyo San Antonio, colindante con la laguna y arroyo del mismo nombre, con el paso y estero de Petaluma. Librese el correspondiente despacho, tomese razon en el libro respectivo y derijase este espediente à la ex'ma asamblea departamental para su aprobacion.

El ex'mo S'or D. Manuel Micheltorena, general de brigada del ejercito Mejicano, gobernador y comand'te g'ral de este departam'to de California, asi lo mando decreto y firmo de que. Doy fée.

Sello primero, ocho pesos.

Habilitado provisionalmente por la aduana maritimi del puerto de Monterrey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro, y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.]

El ciudadano Manuel Micheltorena, general de brigada del ejercito Mejicano, ayundante g'ral de la plana mayor del mismo, gobernador comand'te g'ral é inspector del departamento de Californias.

Por cuanto D. Juan Miranda, ha pretendido para su beneficio personal, el de su familia el terreno que se nombre Arroyo de San
38 Antonio, colindante con la laguna y arroyo del mismo nombre, con el paso y estero de Petaluma ; practicados previamente las diligencias averiguaciones consernientes segun lo dispuesto por leyes y reglamentos de la materia usando de las facultades, que me son conferidas á nombre de la nacion Mejicana, he venido su concederle el terreno mencionado sujetandose à la ex'ma asamblea departamental y bajo las condiciones siguientes :

1a. No podra venderlo enagenarlo ni potecarlo, imponer censo vinculo ni otro gravamen alguno y ni aun donarlo.

2a. Podra sercarlo sin perjudicar las travecias caminos y servidumbres lo disfrutará, libre y esclusivamente destinandolo al uso o cultivo que mas le acomode.

3a. El terreno de que se hace donacion es de tres sitios de ganado mayor segun lo esplica el diseño respectivo. El juez que diere la posecion la hara medir conforme á ordenanza quedando el sobrante que resulte á la nacion para las usos conveniente.

4a. Si contraviniere á estas condiciones perderá su derecho al terreno y sera denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el presente titulo se tome razon de el en el libro respectivo y se entreque al interesado para su resguardo demas fines.

Dado en Monterrey á ocho de Octubre, de mil ochocientos cuarenta y cuatro.

(Here follows map—original, page 38.)

El ciudadano Manuel Micheltorena, general de brigada del ejercito Mejicano, ayudante g'ral de la plana mayor del mismo, gobernador, comandante g'ral é ynspector del departam'te de Californias.

Por cuanto D. Juan Miranda, ha pretendido para su beneficio personal y el de su familia el terreno que se nombra arroyo de San Antonio, colindante con la laguna y arroyo del mismo nombre, con el paso y estero de Petaluma, practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos de la materia usando de las facultades que me su conferidas á nombre de la nacion Mejicana he venido en conceder el terreno mencionado sujetandose á la ex'ma junta departamental y bajo las condiciones siguientes :

1a. No podra venderlo enagenarlo ni potecarlo, imponer censo vinculo ni otro gravamen alguno y ni aun donarlo.

39 2a. Podra sercarlo sin perjudicar las travesias caminos y servidumbres, lo disfrutará libre y exclusivamente destinandolo al uso o cultivo que mas le acomode.

3a. El terreno de que se hace donacion es de tres sitios de ganado mayor segun lo esplica al diseño respectivo. El juez que diere la posecion lo hará medir conforme á ordinanza que dando el sobrante que resulte á la nacion para los usos convenientes.

4a. Si contraveniere á estas condiciones perdera su d'ho al terreno y sera denunciable por otro.

En concecuencia mando que teniendose por firme y valedero el presente titulo se tome razon de el en el libro respectivo y se entreque al interesado para su resguardo y demas fines.

Dado en Monterey a ocho de Octubre, de mil ochocientos cuarenta y cuatro.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and, as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine inclusive, exhibit a true and accurate copy of a document on file in said archives, entitled "Espediente promovido por el ciudadano Juan Miranda, en solicitud del *del* terreno nombrado Arroyo de San Antonio."

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this first day of May, 1856.

[SEAL.]

JOHN C. HAYS,
U. S. Sur. Gen. for Cal'a.

Endorsed: Filed May 7, 1856.

CHEVERS, *Deputy.*

Deposition of Joel P. Walker.

United States district court, northern district of California.

THE UNITED STATES
vs.
ELLEN E. WHITE, adm'x of Charles White, dec'd.

SAN FRANCISCO, CAL., *May* 1, 1856.

On this day before me, Geo. Pen Johnston, a commissioner of the United States for the districts of California, duly authorized to
40 administer oaths, &c., &c., came Joel P. Walker, a witness produced on behalf of the United States in case No. 346, being an appeal from the board of commissioners to ascertain and settle the

private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn and testified as follows :

Present : J. J. Williams, esq., appearing for the U. S. district attorney on behalf of the U. S., and E. L. Goold, esq., appearing for V. E. Howard, esq., on behalf of the claimant; the claimant, James F. Stuart, esq., being also present; this deposition being taken by consent of all parties.

Questions by J. J. Williams, esq., att'y for U. S.

Question 1. What is your name, age, and place of residence?

Answer 1. Joel P. Walker is my name; I am fifty-eight years of age; and I reside in Sonoma county, California.

Question 2. When did you first come to California?

Answer 2. I first came to California in 1841.

Question 3. Are you acquainted with Antonio Ortega? If yea, how long have you known him, and under what circumstances?

Answer 3. I am acquainted with Antonio Ortega; I have known him since 1842, and knew him in that year; he lived with me in Oregon about three years.

Question 4. When did you go to Oregon from California?

Answer 4. In or about the middle of May, 1843.

Question 5. Did any one accompany you to Oregon? If so, who?

Answer 5. A great many accompanied me, and among them was Ortega.

Question 6. While in Oregon did you have any conversation with said Ortega in regard to any lands in California, especially in connection with himself?

Answer 6. I had.

Question 7. State that conversation.

Answer 7. He stated that he had spoken to the authorities in California, or rather to General Vallejo, (he was the one in authority in granting lands on the north side of the bay of San Ffancisco,) about a piece of land on the estero Petaluma, but that he had not got any papers for it, but thought he could get them on his return to California.

Question 8. When did you return from Oregon to Cal'a?

Answer 8. In August, 1848.

Question 9. After your return in August, 1848, did you have any conversation with the said Ortega with regard to this same matter? If yea, please state that conversation.

Answer 9. I met with Ortega that fall in Sonoma, and he
41 told me he had gotten his papers for his land; he had promised me in Oregon if he got his land he would give me one league of it, and I had asked him if he had gotten his papers, and he said if I would go down to his room with him he would show them to me, that they were there in his trunk; I went with him and saw the papers

Question 10. What was the date of the said papers, by whom were they signed, and what quantity of land did they purport to convey?

Answer 10. The papers were dated in 1841; they were signed by

Alvarado and M. G. Vallejo ; there were no other signatures, that I remember having seen, in or upon them ; they purported to convey two leagues of land ; he read the grant to me ; it was written in the Spanish language.

Question 11. How many papers were there, and what did they purport to be ?

Answer 11. There were two papers : one was his petition asking for the land and a grant of the same, and the other paper was a map, to which there was no name.

Question 12. Look at the two papers now shown to you, marked, respectively, "Doc. H H. No. 1, annexed to the deposition of L. A. D de Ortega, taken before Comm'r Hiland Hall," "B. P. L. exhibit to deposition of Juan B. Alvarado, Dec. 7, 1854," and "Doc. H. H. No. 2, annexed to the deposition of L. A. Duque de Ortega, taken before Comm'r Hiland Hall," "A. P. L. exhibit to deposition of Juan B. Alvarado, Dec. 7, 1854," produced from the office of the surveyor general of the U. S. for the State of California, and heretofore filed in this case when before the U. S. land commission, and state whether or not they are the same papers shown you as aforesaid by the said Ortega in 1848 ?

Answer 12. I have never seen either of the papers now shown me before to-day. They are not the papers which were shown me by Ortega in '48.

Question 13. Had the paper purporting to be a grant, which was shown to you by Ortega, the name of Alvarado in one, or two, or more places ?

Answer 13. I did not see the name of Alvarado on that paper in more than one place ; it was on the first page, in the lower right-hand corner.

Question 14. What were the circumstances of the said Antonio Ortega previous to his trip to Oregon as regarding property or money ?

Answer 14. As regarding his money matters I know nothing ; he had no property that I know of, except one cow and a couple of horses which were given him, and which he took with him to Oregon ; he used to be knocking about Gen. Vallejo's as a sort of steward ; his family lived in a small adobe house close by.

Question 15. When in Oregon, did you render him any ser-
42 vice which induced him to make you the promise of the land of which you have before spoken ?

Answer 15. I don't know what induced him particularly to promise me the land ; but when in Oregon, in the winter-time, when it was cold and wet, I gave him blankets, took care of him, fed, clothed, and sheltered him ; I also started him home to California in or about the fall of 1845, but he was wrecked and returned to me almost naked ; and after that I kept him until the winter of 1846, or the spring of 1847, when I started him home again.

Question 16. In what respect did the map shown to you in 1848 by Ortega differ from the one just shown you ?

Answer 16. The map which he showed me was nothing but marks with the pen on a piece of paper, showing the course and bends of the

estero, and I supposed was made by himself; it was nothing like the map now shown me.

Cross-examination.—Questions by the attorney for the claimant.

Question 17. Are you acquainted with the Spanish language?

Answer 17. I ought to be; I have been long enough among the Spaniards; I am partially acquainted with the language; I went to Mexico in 1822, and have been dealing with Spaniards ever since, and have spoken and understood the language since that time, though I do not speak it as well as some do.

Question 18. Can you read the Spanish language?

Answer 18. I can take a piece of paper and get the contents of it; I will not say that I can read it, for I am not a Spanish scholar.

Question 19. Did you read or did you endeavor to read the grant shown you by Ortega?

Answer 19. I looked over the grant, but neither read nor endeavored to read it; as I have said, Ortega read it to me; I saw the words "dos sitios" in it, and a good many words I did not understand; it was badly written.

Question 20. Did Ortega read it to you in English or Spanish?

Answer 20 He read it in Spanish; it was written in Spanish, and Ortega could not speak English

Question 21. Do you know what motive Ortega had in reading to you the contents of the document, after stating to you he had it in his possession?

Answer 21. I do not, unless it was to convince me that he had the papers, for I doubted whether he had them, and often told him in Oregon that I doubted whether he could or would get them.

Question 22. Did you object to the donation of the league you have spoken of?

43 Answer 22. I did; I thought the papers were antedated; though I gave no reasons to Ortega for objecting to the donation.

Question 23. How many times did Ortega offer you the land, and how often did you object to taking it?

Answer. 23. Ortega offered me the land repeatedly, and I put him off, without giving him any reason; I didn't want to hurt the old man's feelings.

J. P. WALKER.

Sworn to and subscribed before me this 1st day of May, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Examination adjourned until to-morrow, Friday, May 2, A. D. 1856, at 10 o'clock a. m.

SAN FRANCISCO, CAL.,
May 2, *A. D.* 1856.

Examination of Joel P. Walker resumed from yesterday, as witness for the U. S. in the foregoing case.

Cross-examination continued.—Questions by the att'y for claimant.

Question 24. After the confirmation of the claim, did you on more than one occasion ask Ortega for the league?

Answer 24. No; I named it to him but once; and in course of conversation with him in this place, I said to him: Antonio, I want my land now. I knew that he had given it away to the priest before—at least I had heard so. He then told me he had done so.

Question 25. Did you ever hear that before the confirmation of the claim?

Answer 25. Yes, I had heard it.

Question. 26. Why did you not ask him for the land before the confirmation of the claim?

Answer 26. I had not occasion to ask him, for he had often offered it to me; always offered it to me when I met him, and said: Why don't you go on to your land? I always gave him an evasive answer. I did not want to hurt the old man's feelings; I felt friendly to him.

Question 27. After you had heard of his giving the land to the priest, and before the confirmation, did you give him one of these evasive answers?

Answer 27. I do not recollect; the old man left Sonoma with his two boys, and went over to Santa Clara or San José. He took his two boys from his wife, and told me he intended to put them to school at Santa Clara or San José; and I rarely met him, except when I saw him in this city.

44 Question 28. Do you know whether he abandoned his wife on the ground of adultery?

Answer. 28. Ortega told me in Oregon that he never intended to live with her; that Salvador was attending to her, and that she would not suffer. I know nothing of my own knowledge. He told me that he left her for adultery.

(The attorney for the U. S. objects to the foregoing answer as irrelevant, hearsay, and otherwise incompetent testimony.)

Question 29. Do you recollect where you were when Ortega first made you the offer of the land?

Answer 29. Yes, I do; it was at Sonoma; it was about the 2d day of October, 1848.

Question 30. About how much time elapsed before Ortega offered you the land the second time?

Answer 30. I do not recollect; it was not a considerable time—probably two weeks or a month.

Question 31. About how long after that did he again offer you the land?

Answer 31. About the same time; whenever I met him he would say: Why don't you go on the land?

Question 32. Did you not at different times give him different answers?

Answer 32. I cannot tell about the difference. I always gave him some evasive answer.

Question 33. Did the same motive influence you the first time and the other times when you met Ortega, as spoken of above, in giving him evasive answers?

Answer 33. Yes, the same.

Question 34. Was it because you considered the title antedated?

Answer 34. Yes, it was.

Question 35. What is the said Ortega's age, and where did he live before he came to California?

Answer 35. From his own account he must be upwards of eighty years of age. He told me that he lived in New Orleans in 1802 and 1803; was a lieutenant in the Spanish army 25 years, and was a priest about three years.

Question 36. Could Ortega write?

Answer 36 He could write his name and read.

Question 37. What was Ortega's general character?

(Objected to by the att'y for U. S. as incompetent.)

Answer 37. I never heard anything against him in my life.

Question 38. Where were you and Ortega when he first proposed to you to take a league of land?

Answer 38. In Sonoma.

Question 39. Did he speak to you about taking it when you were in Oregon?

Answer 39. He told me if he got the land I was to have one league of it.

45 Question 40. While you were in Oregon did not Ortega tell you that he had a grant or title to a piece of land, and was going to get it perfected?

Answer 40. He did not.

Question 41. Since your return from Oregon, have you not stated to one or more persons that Ortega did tell you so?

(This question is objected to by the att'y for the U S. in point of form, and as not specifying the names of the persons, or of any of them.)

Answer 41. I never did; but I did tell some persons that Ortega said he had spoken for some land, and expected to get it when he got back from Oregon; and I also told some persons that I believed the papers he got when he returned from Oregon were antedated.

Question 42. Since your return from Oregon have you advised any person to purchase under the Ortega title, stating it was a good title?

(Objected to by the att'y for U. S for the reasons last above assigned.)

Answer 42. I never did; but I advised Valentine to hold on to the Miranda title, for if there was any good title, I believed that was the one.

Question 43. Since your return from Oregon, did you not state to Charles Patten that Ortega told you in Oregon he had a grant or title to land in California, and that he was coming to get it perfected?

(Objected to by the attorney for the U. S.)

Answer 43. I have no recollection of having any conversation with Mr. Patten about it.

Question 44. Can you say that you did not make this statement to Charles Patten?

(Objected to by the attorney for the U. S.)

Answer 44. I have no recollection of ever speaking to him of land matters. I might have talked to him of the grant, or I might not; but I have no recollection of having done so in my life.

Question 45. Did Ortega continually offer you the league up to the time of the confirmation of the title?

Answer. 45. While he remained in Sonoma he did; after he left Sonoma he never did.

Question 46. When did he leave Sonoma?

Answer 46. I do not know when it was.

Question 47. When Ortega first spoke to you about the league in Oregon, what was your answer?

Answer 47. I do not recollect what it was.

Question 48. What did you say the 2d, 3d, and 4th time?

Answer 48. I do not recollect what it was. I do not recollect when the 2d, 3d, and 4th time was.

Question 49. Did you make any objection on any of these occasions to receive the league?

46 Answer 49 I do not recollect of having made any objections to the old man.

Question 50. Do you recollect saying anything implying that you would accept or reject it, in Oregon?

Answer 50. No, I never did. I told the old man that if the flag was changed I was coming back; but if it was not, I was not going to return.

Question 51. After the title was confirmed, did you ask him for it but once?

Answer 51. I only mentioned it to him once.

Question 52. What was his answer?

Answer 52. He answered that he had given it to the priest for the education of his boys. The Ortega of whom I am speaking married Juan Miranda's daughter.

JOEL P. WALKER.

Sworn to and subscribed before me this 2d day of May, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Endorsed: Filed May 7, 1856.

CHEVERS, *Deputy.*

Deposition of Michael L. Acolti.

United States district court, northern district of California.

SAN FRANCISCO, *Nov'r* 14, 1856.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Michael L. Acolti, a witness produced

on behalf of the claimant in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: Volney E. Howard, esq., counsel for the claimant, and Wm. Blanding, esq., U. S. district attorney.

Questions by claimant's counsel.

Question 1. What is your name, age, and place of residence?

Answer 1. Michael L. Acolti; am 50 years of age, and reside in Santa Clara county, Cal'a; I am a clergyman.

Question 2. How long have you resided in California?

Answer 2. I came here first in the year 1849, where I re-
47 sided nine months; then I went to Oregon, where I resided until within the last twelve months, with the exception of the time I was travelling in Europe and the eastern States

Question 3. Are you acquainted with Antonio Ortega?

Answer 3. I am; I first became acquainted with him in Oregon, in the year 1845, I think; I knew him there about one year; he lived with me in my house about that length of time.

Question 4. Do you know of Ortega attempting to return to California by sea?

Answer 4. I do.

Question 5. What do you know of the circumstances of his attempting to return to California from Oregon?

Answer 5. To the best of my recollection it was in the year 1845 or 1846 he took passage on a vessel, which vessel was wrecked on the bar at the mouth of the Columbia river; he returned to my house entirely destitute, having lost everything in the wreck; I furnished him with some clothing, blankets, &c.

Question 6. With whom did Ortega stop from that time until he again started for California?

Answer 6. I am not sure, but I think with Walker or Waldo; I do not recollect which it was.

Question 7. During the residence of Ortega in Oregon with you, did he make any overtures to you for the sale to you of a tract of land claimed by him in California? And if so, state what overtures were made, and in reference to what tract of land.

(Question objected to by U. S. dist. att'y as assuming a fact, as leading, as irrelevant, as hearsay, and as being otherwise incompetent.)

Claimant's attorney waives, for the present, the question as above propounded, and puts the following:

Question 8. Did Ortega, while residing with you in Oregon, make any overtures to you for the sale to you of any land in California?

(Objected to on the part of the U. S. as hearsay, irrelevant, and incompetent testimony.)

Answer 8. He did not offer for sale, but for donation.

Question 9. Please state all the circumstances within your knowledge in reference to such offer of donation.

(Same objection on the part of U. S. as to question 8.)

Answer 9. He requested me, together with some other priests, and with some sisters of Notre Dame, to come to California, for the purpose of opening a school, stating that he would give, together with that piece of land, half his stock of cattle on the land, on the condition that I would educate his children; in reply to my question whether the land was secure, he stated that he had a grant, and the title in California, and his wife, I think he said, was living on the place.

48 Question 10. After Ortega returned to California, did you have any correspondence with him?

(Same objection on the part of U. S. as to preceding question.)

Answer 10. He wrote to me a letter making the same proposal as above stated, and urging me to come to California.

(This answer is objected to for the reason above assigned, and for the further reason that the letter, the contents of which were stated, is not produced.)

Question 11. Did you come to California in answer to that letter; and if yea, when?

(Objected to as irrelevant and incompetent.)

Answer 11 I did not.

Question 12. Claimant's counsel here presents certain papers to the witness, to wit, the original petition, grant, and map, copies of which are contained in the transcript of the record, and asks the following question: Have you ever before seen the above-mentioned papers; and if yea, when first, and where?

(Objected to on the part of the U. S.)

Answer 12. I have seen said papers in San Francisco; I first saw them in 1849.

Question 13. Under what circumstances did you first see them?

Answer 13. Said papers were delivered to the Rev'd Mr. Brouillet by Ortega; on my arrival in San Francisco from Oregon, Mr. Brouillet had to leave for Oregon, and he left with me the said papers; they were delivered to me in Dec., 1849; I kept them until the month of June, 1850, when I left for Oregon; he then placed them with Father Nobili.

Question 14. Claimant here offers a paper, purporting to be a deed from Antonio Ortega to J. B. A. Brouillet, produced from the archives of the U. S. surveyor general of Cal'a, marked "C. P. L.," exhibit to the deposition of José de la Rosa, Dec. 7, 1854, in case No. 558, before the board of U. S. land commissioners, and asks as follows: State what you know in reference to this paper.

Answer 14. This paper was delivered to me at the same time that the other papers referred to in the foregoing answer were, and remained the same length of time in my possession.

Question 15. Do you know what was the real consideration of this deed?

Answer 15. I do, as I was personally interested in the matter; I know the consideration; it was that the children of Ortega were to be educated.

Question 16. Has this consideration been complied with, or performed?

(This and the foregoing question and answer objected to on the part of the U. S. as irrelevant and incompetent.)

Answer 16. It has; and I am now educating one of the daughters.

Question 17 Is this education of Ortega's children in consideration of said conveyance, the consummation of the arrangement proposed by Ortega in Oregon, to which you have before testified?

(Objected to as irrelevant and incompetent.)

Answer 17. It is.

Cross-examined by U. S. dist att'y.

Question 1. In what month of the year 1845 did you first make the acquaintance of Ortega?

Answer 1. I do not recollect the month—it was in the early part of 1845.

Question 2. How came Ortega to go to your house at that time?

Answer 2 He made my acquaintance as being a clergyman, and because I was the only one who could speak Spanish.

Question 3. Were you at home in Oregon during the whole of the year 1845?

Answer 3. I was.

Question 4. Did Ortega tell you by whom this land was granted to him?

Answer 4. He said it was granted him by the Mexican government, and I think he said it was in consideration of his military services.

Question 5. What was the date of the letter above referred to, written to you by Ortega after his return to Cal'a?

Answer 5. I cannot remember the date.

Question 6. Did you see Ortega deliver what you have called the original papers to the Rev'd Mr. Brouillet?

Answer 6. I did not; but as soon as Mr. Brouillet received the papers he wrote to me in Oregon informing me that he had received them, and urging me to come to California. After my arrival here, Ortega told me that he had delivered the papers to Father Brouillet, and that is the way I know that the papers were delivered to the Rev'd Mr. Brouillet.

Question 7. What character of education did you give the children of Ortega, in consideration of the conveyance?

Answer 7. We taught them to read, to write, and speak English, according to their capacity. The daughter is now in the convent at Benicia, and is receiving a common education.

Question 8. Please state in what month of 1849 you first came to California?

Answer 8. In the month of December.

MICHAEL L. ACOLTI.

49

Sworn to and subscribed before me Nov. 14, 1856.

JNO. A. MONROE,
U. S. Com'r.

Endorsed: Filed Nov. 14, 1856.

CHEVERS, *Deputy.*

50 *Deposition of James B. Huie.*

United States district court, northern district of Cal'a

SAN FRANCISCO, *November* 18, 1856.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came James B. Huie, a witness produced on behalf of the claimant, in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: James F. Stuart, claimant, and Wm. Blanding, esq., U. S. dist attorney.

Questions by claimant.

Question 1. What is your name, age, and place of residence?

Answer 1. James B. Huie; am 57 years of age, and reside in Sonoma county, Cal'a.

Question. 2 Are you acquainted with Joel P. Walker; if yea, when did you first make his acquaintance, and where?

Answer 2. I am acquainted with Mr. Walker, and I believe his name is Joel. I first made his acquaintance in Petaluma city, Sonoma county, in the summer or fall of 1854.

Question 3. Did he at that time enter into any conversation with you in reference to the Ortega grant or claim to the rancho "Arroyo de San Antonio?" and if yea, state what that conversation was.

(Objected to on the part of the U. S. as being leading, and tending to elicit hearsay and incompetent testimony, and for the further reason that no sufficient foundation has been laid in the deposition of the said Joel P. Walker, for this evidence.)

Answer 3. He did. He stated that he knew Ortega in Oregon, some time before 1846, before the war. It was a transient conversation; one that I had no interest in. He told me Ortega told him in Oregon that he owned three or four leagues of land on this ranch of which we were speaking; and we were then speaking of the Miranda ranch. He said then that Ortega claimed this ranch by a different claim from the Miranda claim, when he was in Oregon, and offered him (Walker) a league of land if he would come to California. He (Ortega) stated to him (Walker) that he owned the land.

Cross-examined by U. S. attorney.

Question 1. Having no interest in this matter, did you pay particular attention to this conversation, so that it would make a lasting impression on your mind?

51 Answer 1. I think I recollect the conversation pretty well.

JAMES B. HUIE.

Sworn to and subscribed this 18th Nov. 1856, before me.

JNO. A. MONROE, *U. S. Com.*

Endorsed: Filed Nov. 18, 1856.

W. H. CHEVERS, *Deputy.*

Deposition of Charles Patton.

United States district court, northern district of Cal'a.

SAN FRANCISCO, *January* 16. 1857.

On this day, before John A. Monroe, a commissioner of the United States before the northern district of California, duly authorized to administer oaths, &c., &c., came Charles Patton, a witness produced on behalf of the claimant, in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: Volney E. Howard, esq., counsel for claimant, and Wm. Blanding, esq., U. S. dist. att'y, who requested that the witness be sworn on his voire dire, which was done accordingly.

Questions by U. S. district attorney.

Question 1. Do you not claim a portion of the land, the title to which is involved in this case?

Answer 1. I do.

Question 2. Do you not claim it under the provisional grant purporting to have been made to Antonio Ortega, and which grant is the basis of this claim?

Answer 2. I do.

Question 3. If a decree of confirmation should be entered by the district court in this case, would you not be directly benefited by such decree?

Answer 3. I consider that I would.

(The attorney for the United States objects to the examination and testimony of this witness, upon the ground that he is directly interested in this claim, and because he is one of the parties for whose benefit the same is prosecuted.)

Witness is now sworn in chief.

Question 1. What is your name, age, and place of residence?

Answer 1. Charles Patton; am forty-two years of age, and reside in Sonoma county, California.

52 Question 2. Are you acquainted with Joel P. Walker; and if yea, how long have you known him?

Answer 2. I am; I have known him since the winter of 1849 and 1850.

Question 3. During this time have you ever had any conversation with him in reference to the title of the rancho Arroyo de San Antonio, claimed in this case? if yea, state when, and where, and what that conversation was.

(The attorney for the U. S. objects to the foregoing question, as tending to elicit hearsay testimony; or if intended in contradiction of the testimony of the said Joel P. Walker, heretofore taken in this case, or to discredit him as a witness, objects for the further reason that no sufficient foundation has been laid in the deposition of the said Walker for such testimony; and further, because of the interest of the said witness in the case.)

Answer 3. I have, early in 1854, at his then residence, near Napa city; he told me that the title to that land was in Antonio Ortega; I told him that I had never heard of that title; he told me that Ortega's title was undoubtedly good; this conversation probably lasted from half an hour to an hour; I cannot recollect all that was said; but in the progress of it he spoke of Ortega having lived with him in Oregon, and of his offering him a piece of his land, as he wanted Walker to settle on it; I spoke to Walker of the Miranda title; he said that the Ortega title was good; I do not know whether any one was present when we had this conversation, and heard it; he told me that while in Oregon, Ortega told him that he had a grant of land in California, and that if he, Walker, would come to this country he would give him a piece of his land; I had no interest in this land at the time of this conversation, but acquired my interest under the Ortega title about the 1st June, 1856; previous to that I had only interest as mortgagee, but no interest whatever at the time of this conversation.

(The attorney for the U. S. objects to the whole of this deposition, and protests against its being received or read in evidence, because of the interest of the witness directly in the result of this case, and for the other reasons above assigned.)

CHARLES PATTON.

Sworn to before me and subscribed Jan'y 16, 1857.

JOHN A. MONROE,
U. S. Commissioner.

Endorsed: Filed January 16, 1857.

W. H. CHEEVERS,
Deputy Clerk.

53 *Petition for review.*

To the honorable district court of the United States in and for the northern district of California:

THE UNITED STATES
v.
CHARLES WHITE. } No. 346.—Tr. 558.

The petition of the United States, by their attorney, represents that this cause is an application for a review of the decision of the board of land commissioners, whereby the claim of the appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said record was filed in this court on the 1st day of December, A. D. 1855; that a notice of appeal was filed on the 11th day of February, A. D. 1856, and that the land claimed lies in the said district; that the said claim is invalid. Wherefore appellants pray that the said decision of the board be reversed, and that this court decree the said title invalid.

WM. BLANDING, *U. S. Att'y.*

Endorsed: Filed January 31, 1857.

W. H. CHEVERS, *Deputy.*

Answer.

In the district court of the United States for the northern district of California.

THE UNITED STATES, appellants,
v.
E E. WHITE, adm'x, &c.

And now comes the appellee, and, for answer to the appellants' petition for review, says that there is no error in the proceedings in judgment of the said United States commissioners; that said claim is a genuine and valid claim, and appellee prays that the same may be confirmed by this hon. court, and the judgment of the commissioners in all things affirmed.

V. E. HOWARD,
for Appellee.

Endorsed: Filed January 31, 1857.

W. H. CHEVERS, *Deputy.*

54 *Stipulation and order.*

District court of the United States for the northern district of Cal'a.

ELLEN E. WHITE, adm'x of Charles White, dec'd, *ads.*
THE UNITED STATES. } No. 346.

It is hereby stipulated and agreed that the rule of the said court, requiring evidence tending to establish fraud to be taken in open court,

or presence of one of the federal judges, is waived in this case, both as regards the evidence heretofore or hereafter to be taken in this case, on appeal from the decision of the board of land commissioners.

HOWARD & GOOLD,
For Claimant.
WM. BLANDING,
Dis't Att'y.

Upon reading the above stipulation, it is ordered that leave be given to take further testimony in the above case, before the U. S. commissioner, either of the said district court, or of the circuit court of the U. S. for the districts of California, and that the said rule be waived according to the above stipulation.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed March 10, 1857.

W. H. CHEVERS, *Deputy.*

Stipulation.

THE UNITED STATES
v.
ELLEN E. WHITE, Adm'x of Charles White, dec'd.

It is hereby agreed and admitted that the signatures of J. P. Leese, J. Vioget, M. G. Vallejo, Pio Pico, José M. Covarrubias, and Agustin Olvera, in and upon the original espediente referred to in, and a copy of which is annexed to, the deposition of R. C. Hopkins, taken this morning in this case, the petition of Juan N. Padilla, for the rancho Roblar de la Miseria, and proceedings thereon, are the genuine signatures of the respective signers above named; and also the genuineness of the certificate of Jimeno, and of his signa-
55 ture thereto, is admitted, on the index referred to in, and extracts of which are attached to, the said deposition of said Hopkins.

March 11, 1857.

HOWARD & GOOLD,
For Claimant.

Endorsed: Filed March 12, 1857.

W. H. CHEVERS, *Deputy.*

Proceedings at the instance of the citizen Juan Miranda, petitioning for the land named "Arroyo de San Antonio."

Translation of Espediente of Juan Miranda.

No. 397.

Fourth seal, twenty-five cents.

Authorized provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one

thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

PABLO DE LA GUERRA.

MICHELTORENA.

To the First Alcalde of Sonoma:

Juan Miranda, a resident and settled within the jurisdiction of Sonoma, before your honor represents, that for more than four years he has been in possession of a place (sitio) on the Arroyo of San Antonio, which was provisionally granted to him by Señor Don Guadalupe Vallejo, the papers in relation to which concession it seems have been misplaced; that although he has endeavored to recover them, they have not been found, for which reason he represents anew, saying that on said place (sitio) are maintained the regular number of flocks and herds, and the requisite cultivation. Wherefore he supplicates your honor that the necessary and accustomed steps may be taken in order to obtain the title to said rancho. He petitions for three sitios (tres sitios,) as is laid down on the accompanying map. For all of which he will remain obliged.

February 21, 1844.

JN. MIRANDA.

I certify that the land solicited has been occupied several years by the interested party; that it does not pertain to any pueblo or corporation whatever.

Sonoma, Feb. 20, 1844.

JACOB P. LEESE.

56 MONTEREY, *April* 30, 1844.

Let the secretary of state report upon the same.

MICHELTORENA.

To his Excellency the Governor:

The party interested has occupied the land he claims for four years, by cultivation, and by having a house therein with all his goods. Said land never has belonged to any one in particular, as is manifested by the report of the justice of Sonoma; for which reason, and because the claimant is an honorable man, and burdened with a family, he merits that your excellency should grant him the favor of acceding to his solicitude, if you should deem it expedient.

Monterey, May 2, 1844.

MAN'L JIMENO.

MONTEREY, *May* 30, 1844.

Let the title issue.

MICHELTORENA.

MONTEREY, *Oct'r* 8, 1844.

In view of the petition which commences this espediente, the foregoing reports, and all the rest that was borne in mind and necessary to be observed, in conformity with the laws and regulations on the

subject, I declare Don Juan Miranda owner in property of the place known by the name of "Arroyo de San Antonio," bounded by the laguna and arroyo of the same name, by the crossing and estero of Petaluma. Let the corresponding title be made out and entered in the respective book, and let this espediente be forwarded to the most excellent departmental assembly for its approval.

His excellency Señor Don Manuel Micheltorena, brigadier general of the Mexican army, governor and commandante general of the department of California, thus did command, decree, and sign, whereof I bear witness.

First seal, one dollar.

Authorized provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

PABLO DE LA GUERRA.

MICHELTORENA.

The citizen Manuel Micheltorena, brigadier general of the Mexican army, adjutant general of the staff of the same, governor, commandante general and inspector of the department of the Californias.

Whereas Don Juan Miranda has solicited, for his personal benefit and that of his family, the land which is named "Arroyo de
57 San Antonio," bounded by the laguna and arroyo of the same name, with the crossing and estero of Petaluma, the previous steps and investigations having been taken and made as required by the laws and regulations on the subject; by virtue of the authority vested in me, in the name of the Mexican nation, I have determined to grant to him the said land, subjecting it to the most excellent departmental assembly, under the following conditions:

1st. He shall not sell, alienate, nor mortgage it, impose ground-rent, entail, nor any other incumbrance, nor even convey it as a donation.

2d. He may fence it without prejudice to the crossings, roads, and public uses; he shall enjoy it freely and exclusively, destining it to the use or cultivation which may best suit him.

3d. The land of which donation is made consists of three square leagues (tres sitios de ganado mayor,) as is explained by the respective map. The justice who gives the possession will have it measured according to law, the surplus that may result remaining to the nation for its convenient uses.

4th. If he violate these conditions he will lose his right to the land, and it will be denounceable by another.

In consequence whereof, I command that, the present title being held firm and valid, an entry be made of it in the respective book, and that it be delivered to the interested party for his security and further ends.

Given in Monterey on the 8th of October, 1844.

Endorsed: Filed March 12, 1857.

W. H. CHEVERS, *Deputy*.

Translation of espediente of J. N. Padilla.

Fourth seal—Two reales.

Authorized provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year one thousand eight hundred and forty-five.

PABLO DE LA GUERRA.

MICHELTORENA.

To the constitutional 1st justice of Sonoma:

Juan N. Padilla, a resident of this district, as may be most expedient, before your honor appears and says: That having to apply to the departmental government, through a memorial, soliciting for my well-being, the place known by the name of Roblar de la Miseria, containing 3 or 4 square leagues (sitios de ganado mayor,) a little more or less, and bounded on the east by land of Don Mariano
58 G. Vallejo; on the north by that of Don Juan Casteneda; on the west by that of Don Juan Vioget; on the south by that of Don Bartalo Bojorques; on the southeast with that of Don Juan Miranda.

Now, considering that I have to go so far as Monterey with my petition, only to obtain the decree of his excellency the governor, that the corresponding justice may report whether or not the place I solicit is vacant, and being anxious to obtain as soon as possible the favor of a grant to the place I solicit on account of the distance from this place to Monterey, I request that your honor may be pleased to ask the report of the adjoining neighbors beforehand, and certify to me the same, that I may annex it to this document, and transmit them to the departmental government, making oath that this is not done in malice, and whatever else may be necessary.

JUAN N. PADILLA.

OFFICE OF THE 1ST JUDGE OF SONOMA,
Nov. 26, 1844.

In my opinion it is proper to ask the reports of the adjoining neighbors, if the land solicited by the interested party is vacant or not, in order justly to declare the same.

JACOB P. LEESE.

The undersigned, in due form, declares that the place known by the name of Roblar de la Miseria contains in fact three or four square leagues, as expressed by the interested party, and that it does not belong to any particular individual whatever, which we certify at the request of the party interested, before the 1st judge of Sonoma, this 26th day of Nov. 1844.

J. VIOGET.

To his honor the Alcalde Don Luis Leos:

The land known by the name of Roblar de la Miseria, petitioned for by Don Juan Padilla, bounded on the east by that of Petaluma, of my property, as far as the little hills of said place, solicited for in

this petition, is vacant, and I believe that it does not belong to any particular individual, corporation, or pueblo, and the subscriber believes that the boundaries, with the rest of the rancho, are the same as those mentioned in the preceding petition.

Sonoma, 11th December, 1844.

M. G. VALLEJO.

Pio Pico, senior member of the departmental assembly, and governor ad interim of the Californias.

Whereas Don Juan Nepomicino Padilla has solicited, for his personal benefit and that of his family, the tract of land known
59 by the name of "Roblar de la Miseria," bounded by lands of Don Mariano G. Vallejo, Don Juan Castenade, Don Juan Vioget, Don Bartolo Boyorquez, and Don Juan Miranda, the necessary investigations having previously been made, by virtue of the authority in me vested, in the name of the Mexican nation, I have thought proper, by decree of this day, to grant to him the said land, declaring it by these presents to be his property, in entire conformity with the law of the 18th of August, 1824, and the regulations of the 21st of November, 1828, subject to the approbation of the most excellent departmental assembly, and under the following conditions:

1st. He may enclose it without interfering with the crossings, roads, and servitudes; he shall enjoy it freely and exclusively, devoting it to the use or cultivation which may best suit his convenience, but he shall have it occupied by an inhabited house and flocks and herds.

2d. He shall solicit the respective justice to give him juridical possession in virtue of this patent, by whom will be marked out the boundaries, with the necessary landmarks, respecting always the legal rights of the adjoining land-owners.

3d. The land of which donation is made is of the extent of four square leagues, a little more or less, (cuatro sitios de ganada mayor poco mas omenos,) as is explained by the map attached to the espediente. The justice who may give him the possession will have it measured in accordance with law.

In consequence whereof, I command that the present title being held as firm and valid, an entry be made of it in the corresponding book, and that it be delivered to the party interested for his security and further ends.

Given in the city of Los Angeles, on this common paper, for want of that which is stamped, on the 25th day of November, one thousand eight hundred and forty-five.

An entry of this title in the respective book.

ANGELES, *May* 8, 1846.

These proceedings being submitted to the most excellent departmental assembly in session to-day, they were, by order of the same, referred to the committee on vacant lands.

PIO PICO.
AGUSTIN OLVERA.

Endorsed: Filed March 16, 1857.

JOHN A. MONROE, *Clerk*.

Certified copy of grant to Bartoleme Boyorquez.

Pio Pico, vocal dicano de la asamblea departamental, y gobernador provisional de las Californias.

Por cuanto el ciudadano Bartolemé Boyorquez, ha pretendido para su beneficio personal y el de su familia el terreno nombrado
60 laguna de San Antonio, colindante al S. E. con Juan Martin, al N. O. con las Dos Piedras, al S O. con los Camales, y al S. E. con Juan Miranda; practicadas previamente las averiguaciones necesarias, en uso de las facultades que me son conferidas á nombre de la nacion Mejicana, he venido por decreto de este dia en concederle el mencionado terreno declarandole la propriedad de el por las presentes letras, de en entera conformidad con la ley de 18 del Agosto, de 1824, y reglamento de 21 de Noviembre, de 1828, a reserva de la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1a. Podra cercarlo sin perjudicar las travecias, caminos y servidumbres; lo disfrutara libre y esclusivamente y destinando lo al uso y cultivo que mas le convenga; pero tendra en el casa habitada y bienes servientes.

2a. Solicitara del juez respectivo le esi la posecion juridica en virtud de este despacho, por el cual se demarcaran los linderos con los mojoneros necessarios perpetando el derecho legal de los colindantes.

3a. El terreno de que se ha hace donacion es de la estencion de seis sitios de ganado mayor segun esplica el diseño que obra en el espediente; el juez que diere la posesion lo hará medir conforme á ordenanza.

En consecuencia mando que teniendose el presente titulo por firme y valedero, se tome razon de el en el libro a que corresponde y se entreque al interesado para su resguardo y demas fines.

Dado en la ciudad a los Angeles, en este papel comun por falta del sellado á veinticinco de Noviembre, de mil ochocientos cuarenta y cinco.

Lueda tomada razon de este titulo en el libro a que corresponde.

ANGELES, *Mayo* 8, *de* 1846.

Dado cuenta en sesion de hoy á la ex'ma asamblea departamental con este espediente se mando pasar á la concesion de terrenos baldios.

PIO PICO, *Presid't.*

AGUSTIN OLVERA, *D. S.*

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CAL'A.

I, John C. Hays, surveyor general of the United States for the State of California, and, as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the three preceding
61 and hereunto annexed pages of tracing paper, numbered from one to three, inclusive, exhibit a true and accurate copy of the grant forming part of a document on file in said archives, entitled,

"Espediente promovido por Don Bartolo. Boyorques en pretencion del terreno nombrado 'Laguna de San Antonio.'"

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this sixth day of March, 1857.

[SEAL.]

JOHN C. HAYS,
U. S. Sur. Gen'l for Cal'a.

Endorsed: Filed March 16, 1857.

JOHN A. MONROE, *Clerk.*

Translation of grant to Bartolome Bojorques.

Pio Pico, senior member of the departmental assembly, and governor ad interim of the Californias.

Whereas the citizen Bartolomo Bojorquez has petitioned, for his personal benefit and that of his family, the tract of land named Laguna de San Antonio, bounded on the SE. by the lands of Juan Martin, on NW. by the two rocks, (las dos piedras,) on the SW. by Tomales, and on the southeast with the lands of Juan Miranda; the necessary investigations having been previously made, by virtue of the authority in me vested, in the name of the Mexican nation, I have thought proper by the decree of this day to grant to him the said tract of land, declaring it by these presents to be his property, in entire conformity with the law of the 18th of August, 1824, and the regulations of the 21st of November, 1828, subject to the approbation of the most excellent departmental assembly, and under the following conditions:

1st. He may enclose it without interfering with crossings, roads and servitudes; he shall enjoy it freely and exclusively, devoting it to the use and cultivation which may best suit his convenience; but he shall have a house upon it inhabited, and flocks and herds.

2d. He shall solicit the respective justice to give him juridical possession by virtue of this patent, by whom will be marked out the boundaries, with the necessary landmarks, respecting always the legal rights of the adjoining land-owners.

3d. The land of which donation is made is of the extent of six square leagues, (seis sitios de ganado mayor,) as is explained by the map attached to the espediente; the justice who gives the possession will have it measured according to law.

In consequence whereof I command that, this title being held as firm and valid, entry be made of it in the corresponding book, and that it be delivered to the party interested for his security and further uses.

62 Given in the city of Los Angeles, on this common paper, for want of that which is sealed, on the 25th day of November, one thousand eight hundred and forty-five.

An entry has been made of this title in the corresponding book.

ANGELES, *May the* 8*th*, 1846.

These proceedings being submitted to the most excellent departmental assembly in session to-day, they were, by order of the same, referred to the committee on vacant lands.

PIO PICO, *President.*

AGUSTIN OLVERA.

Endorsed: Filed March 16, 1857.

JOHN A. MONROE, *Clerk.*

Deposition of R. C. Hopkins.

THE UNITED STATES
vs.
ELLEN E. WHITE, Adm'x of Charles White, dec'd. } No. 346.

United States district court, northern district of California.

SAN FRANCISCO, *March* 11*th*, 1357.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came R. C. Hopkins, a witness produced on behalf of the United States in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: Howard and Goold for claimant, and the U. S. dist. att'y.

Deposition taken, by consent written notice waived.

Questions by the U. S. dist. att'y.

Ques. 1. What is your name, and what office, if any, do you at present hold?

Ans. 1. Rufus C. Hopkins; I am clerk in the office of the U. S. surveyor general, in the department of the archives.

Ques. 2. What papers have you under your custody in the archives pertaining to land titles in the State of California?

Ans. 2. The original archives of the Mexican government relating o titles in California, and other matters, together wit h the archives of the late board of land commissioners.

Ques. 3. Have you in this office the original document filed in No. 558, before the land commission, purporting to be a provi-
63 sional grant signed by Governor Alvarado, to Antonio Ortega? If yea, please produce it, and state what are the different dates on said document.

(Objected to by att'ys for claimant.)

Ans. 3. I have the original document in my hands; the petition was signed Sonoma, June 12th, 1840, by Antonio Ortega; the marginal decree is dated June 20th, 1840, or '41. There seems to have been a change made in this date; it appears to have been written

1841 first, and then changed to 1840; this date seems to have been altered with paler ink. It is signed Alvarado.

(Answer objected to.)

Ques. 4. Please look at the petition on this document, signed Antonio Ortega, and state whether the whole of it appears to be written at the same time, with the same pen and ink.

(Objected to.)

Ans. 4. The words "ex'mo s'or gobernador," "Antonio Ortega ciud'no," are written in paler ink than the balance of the petition.

Ques. 5. Have you in your custody the original map filed in said case, No. 558, and also the original map contained in the expediente, "Promovido por el ciudadano Juan Miranda, en solicitud del *del* terreno nombrado Arroyo de San Antonio," No. 397? If yea, please produce them, and describe the one in reference to the other.

Ans. 5. I have both of said documents in my possession, and here produce them; one seems to be a copy of the other; they very nearly resemble each other.

Ques. 6. Please state in what respects these two maps correspond, and the facts that lead you to believe the one the copy of the other.

(Objected to.)

Ans. 6. The outlines correspond, and they are so nearly alike that I think one must be a copy of the other. I examined these maps on a glass, and find they correspond one with the other very accurately; the coloring in both is very similar, and the letters have the same appearance.

(Answer objected to.)

Ques. 7. Please look at the document shown you, marked "A. J." and annexed to this deposition, purporting to be extracts from an original in the office of the U. S. surveyor general, and certified by him, and state whether or not they are faithful extracts from said original documents.

Ans. 7. This is a correct extract of an index on file in the archives of this office.

Ques. 8. State what that index is.

Ans. 8. It is an index of expediente, commencing with No. 1 and continuing to No. 433. This index is certified by Manuel
64 Jimeno, and extends from the year 1834 to 1844. It is on loose sheets, but the numbers run regularly, from one to 433; there are 11 numbers wanting, from 329 to 340, as explained by Manuel Jimeno in his certificate attached to said document. This index gives the name of the ranch, and the party to whom the same was conceded, together with the number of the expediente.

Ques. 9. State whether or not the numbers on this index, the names of the ranchos and of the grantees, correspond with the original expedientes in the office of the surveyor general.

(Objected to.)

Ans. 9. It does, as far as I have had occasion to examine them; those noted on the document attached to my deposition I have examined, and they correspond.

Ques. 10. Look upon the document marked "B," C, "H," and

state whether or not it is an accurate copy of the original on file in the surveyor general's office.

Ans. 10 The three first pages are a copy of the petition of Juan N. Padilla, the report of Jacob P. Leese, Juan Vioget, and M. G. Vallejo, and the three last pages are a copy of the title given to said Padilla of the Roblar de la Miseria.

R. C. HOPKINS.

Sworn to and subscribed before me this 11th March, 1857.

CUTLER McALLISTER, *Com'r.*

Filed March 16th, 1857.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Yndice de los terrenos adjudicados y perzonas a quienes se les ha concedido.

Las Virgenes.....	Conced'o	á José Ma. San Luis Gonzaga, José Ramon Estrada.....	1
* * * *	* *	* * * *	*
* * * *	* *	* * * *	*
* * * *	* *	* * * *	*
Arroyo de San Ant'o	Concedido	á Dn. Juan Miranda.....	397
* * * *	* *	* * * *	*
* * * *	* *	* * * *	*
Putas	Conced'o	a D. José de Jesus Berreyesa..	433
* * * *	* *	* * * *	*
* * * *	* *	* * * *	*

En este indice hay el numera de 433 espediente; pero pr. equivocacion se pasa en la numeracion del 329 la 340, habiendo seguida en la misma.

MAN'L JIMENO.

65 OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and, as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages of tracing paper, numbered from one to three, inclusive, exhibit true and accurate extracts from certain loose sheets on file in said archives, entitled Yndice de los terrenos adjudicados y personas á quienes se les he concedido.

In testimony whereof, I have signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 2d day of May, 1856.

[L. S.]

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress providing for the survey of public lands in California, and for other purposes, approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California;) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original."

B.

Sello cuarto, tos reales.

Habilitado provisionalmente por la aduana maritima de puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

(Rubrica.)

MICHELTORENA.

[Ad'a Marit'a de Mont'y.] *Sor. Juez lo. Constit'nl:*

Juan N. Padilla, vecino dest'a demarcacion ante V. como mejor allo lugar comporesco, y deja q. teniendo necesidad de occurir al gobierno departam'l con un memorial solicitando pa. pones mis bienes la el parage conocido con el nombre del Roblar de la Miseria constante de 3 ó 4 sitios de ganado mallor poco mas ó menos, y colindante al este con Don M'no G. Vallejo, al norte con Don Juan Castaneda, al oueste con Don Juan Vioget, al sur con Don Bartolo Bogosquy, al tueste con Don Juan Miranda.

66 Sor lubista de que tengo q. ocurrir asta Monterey, con mi solicitud por selo el decreto de V. E.; el s'or gen'l pa. q. informé el juez correspondiente se en efecto és ono baldio, el parage q. solisito, y yo interesado en conseguir mas por n'to la gracia de que se mi conseda el titulo, del parage q. solicitar por la distancia q. medir de haqui á Monterey. Suplico á V. so serba pedir el informé a los ser's colindantes antes d'hos, y certificamento V. pa. acompañar este documento al gobierno del depart'o. Gusando no ser de malisio, y lo nesesario, &a.

Sonoma, Noviembre 26, de 1844.

JUAN N. PADILLA.

Júzgado lo de Sonoma.

Nov. 26*a*, 1844.

En mi consepto es conveniente de peder lo y informe los circura bacines se el terreno que se solicito el ynteresado es baldio ó no pa. declararce en todo derecho.

JACOB P. LEESE.

Los que subscribinos, y ha bayo firmamos, declaramosen toda forma q. el parage conocido con el nombre del Roblar de la Miseria es en prefecto constante de 3 ó 4 sitios de ganado mayor como lo espresa en el interesado, y que no pertenese á propriedad particular ninguna lo q. certificamos, y firmamos á pedimento del interesado ante el juez de 1a. nominacion de Sonoma, á los beinte y seis dias del mes de Noviembre, de mil ochocientos cuarenta y cuatro.

J. VIOGET.

Sor. Alcade D. L. Leese:

El terreno conocido con el nombre de Roblar de la Miseria solicitado por D. Juan Padilla, colinda por el este con el de Petaluma de mi propriedad tit'a las lomitas del d'ho en esta inst'a esta baldio, y crea que no pertenece á propriedad particular corporacion ni pueblo, y crea el que suscribe que los linderos con las demas ranchos son los mismos que mencionada la precedente instancia.

Sonoma, 11 de Diciembre, de 1844.

M. G. VALLEJO.

Pio Pico, vocal decano de la asamblea departamental, y gobernador provisional de las Californias.

Por cuanto Dn. Juan Nepomuseno Padilla ha pretendido para su beneficio personal y el de su famillia el terreno conocido con el nombre de Roblar de la Miseria colindante con tierra de Dn. Mariano G. Vallejo, Dn. Juan Castaneda, Don. Juan Vioget, Don Bartolo Bojorguez, y Don Juan Miranda; practicadas previamente las averigua-
67 ciones necesarios, en uso de las facultades que me son conferidas á nombre de la nacion Mejicana, he venido por decreto de este dia en concederle el terreno espresado, declarandolo la propriedad de él por las presentes letras, de entera conformidad con la ley de 18 de Agosto, de 1824, y reglamento de 21 de Noviembre, de 1828, á reserva de la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1a. Podrá cercarlo sin perjudicar las travesias, caminos y servidumbres; lo difrutará libre y esclusivamente destinandole al uso y cultivo q. mas le acomode; pero lo tendra; pero lo tendrá ocupado con casa y bienes somocientes.

2a. Solicitará el juez respectivo le de la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos con las mojoneros necessarios respetando siempre el derecho legal de los colindantes.

3a. El terreno de que le *le* hace donacion es de la estencion de cuatro sitios de ganado mayor poco mas ó menos segun esplica el diseño que obra en el espediente. El juez que lo posesion lo hará medir conforme á ordenanza.

En consecuencia mando que teniendose el presente titulo por firme y valdero le tome razon de el en el libro á que corresponde y se entreque al interesado para su resguardo y demas fines.

Dada en la ciudad de los Angeles en este papel comun por falta

del sellado á veinticinco de Noviembre de mil ochocientos cuarenta y cinco.

JOSE MA. COVARRUBIAS, *Sec.*

PIO PICO.

Queda tomada razon de este superior despacho en el libro respectivo f'ha ut supra.

COVARRUBIAS.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and, as such, having in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, and also the papers of the late board of land commissioners to ascertain and settle private claims in Cal., by virtue of the power vested in me by law, do hereby certify that the six preceding and hereunto annexed pages of tracing paper—numbered from one to six, inclusive, exhibit a true and accurate copy 1st, pages numbered from one to three, inclusive, exhibit a correct copy of the petition, &c., forming part of a document on file in the archives entitled Espediente promovido por Dn. Juan N. Padilla en pretencion del terreno nombrado Roblar de la Miseria, and 68 pages numbered from four to six, inclusive, exhibit a correct copy of the grant to Dn. J. N. Padilla, of the place called "Roblar de la Miseria," filed in case No. 69 on the docket of said board.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San [L. S.] Francisco, this 6th day of March, 1857.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for a survey of public lands in California, and for other purposes," approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California;) and any copy or extract from the plats, field-notes, or other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall in all judicial matters have the same force and effect as the original."

Deposition of P. T. Sherreback.

THE UNITED STATES
vs.
ELLEN WHITE, Adm'x of Charles White, dec'd. } No. 346.

United States district court, northern district of California.

SAN FRANCISCO, *March 14th*, 1857.

On this day before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to ad-

minister oaths, &c., &c., came Peter T. Sherreback, a witness produced on behalf of the United States in case No. 346, being an appeal from the board of commissioners to ascertain and séttle the private land claims in the State of California in case No. 558 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, Messrs. Howard and Goold, attorneys for claimant, and U. S. district attorney.

Questions by U. S. district attorney.

Ques. 1. Your name, age, and place of residence?

Ans. 1. Peter T. Sherreback; 47; San Francisco; I have resided in California since 1840; I was scindico under the Mexican government in 1842, '43, and '44; during the year 1843 I was hide inspector.

I was acquainted with Juan Miranda, of Sonoma county; I first got acquainted with him in the year 1841; he resided in
69 Sonoma county, on the Miranda ranch, as it was called at that time, on the west side of Petaluma creek. I never had any particular business with him; I have visited the ranch; Juan Miranda was living on the ranch at the time.

Ques. Did you have any conversation with him at that time in regard to this ranch and the property upon it?

(Question objected to.)

Ans. The first time I passed there I had not; the second time I passed there I went and borrowed a horse from him to go to Sonoma; I asked him if the horse was his; he said yes, and said the ranch belonged to him also.

Ques. While acting as inspector of hides, were any hides from the Miranda ranch produced before you; and if yea, with whose and what brand, if any, were they marked?

(Objected to.)

Ans. There were hides produced before me by Howard, Mellus & Co., of the Boston ship "Barnstable;" the hides were branded "J. M.," the Miranda sign.

I have several times borrowed horses from Miranda; they were all marked with the same brand.

(Signed) PEDRO T. SHERREBECK.

Sworn to and subscribed before me this 14 March, 1857.

CUTLER McALLISTER,
U. S. Com'r.

Deposition of G. H. Nye.

United States district court, northern district of California.

SAN FRANCISCO, *March* 14, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to ad-

minister oaths, &c., &c., came Gorham H. Nye, a witness produced on behalf of the United States, in case No. 346, being an appeal from the board of commissioners to ascertain and settle private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: Messrs. Howard and Goold, att'ys for claimant, and the U. S. dist. att'y.

Questions by U. S. dist. att'y.

Ques. Name, age, and place of residence?

Ans. Gorham H. Nye; 52; San Francisco.

I was acquainted with Juan Miranda, of Sonoma county; I first knew him in 1838; he resided on his ranch called Miranda ranch; I traded with him.

70 Ques. Did you ever converse with him in regard to the ownership of that property? if yea, please state the conversation, and the circumstances attending it.

(Objected to.)

Ans. I was there on business, and as he had credit on board of my vessel I wanted to know whether he really was the owner of the ranch; he showed me a document on stamped paper; who the signer was I don't recollect; I think it was General Vallejo; I dealt with him afterwards in hides and tallow for some years.

Ques. State what that document was.

(Objected to.)

Ans. A title or grant to his farm, or the place where he resided; this was in 1838; I think this was the date; I was acquainted with Antonio Ortega before he went to Oregon. I think he went to Oregon in 1843.

Ques. Did you ever have any conversation with him in regard to his going to Oregon? if yea, state what it was.

(Question objected to.)

Ans. I did; he said he was going to Oregon to remain; he said he had reasons for leaving the country—family reasons; he accused his wife of inconstancy to her marriage vows, and said he was never coming back; he left his wife entirely destitute; so she told me.

(Answer objected to.)

(Signed) GORHAM H. NYE.

Sworn to and subscribed before me this 14th March, 1857.

CUTLER McALLISTER,
U. S. Com'r.

Filed March 16th, 1857.

W. H. CHEEVERS, *Deputy.*

Copy of order dismissing the Miranda title in land commission.

Board of U. S. land com'rs.

THOS. B. VALENTINE
vs.
THE UNITED STATES. } 45.

The counsel for the claimant in this cause moves the court that the petition herein filed be withdrawn and the cause dismissed.

BROOKS,
Att'y for Cl't.

Feb'y 6th, 1855.

"In case No. 45, Thos. B. Valentine, for the place named 'Arroyo de San Antonio,' filed the following motion, to wit: (here in-
71 sert the motion;) which having been considered, was granted, and ordered that the cause be discontinued and dismissed from the docket."

Before the board of U. S. land com'rs.

THOS. B. VALENTINE and others,
vs.
THE UNITED STATES. } 812.

The counsel for the claimant in this case moves the court that the petition herein filed be withdrawn and the cause dismissed.

BROOKS, *Att'y for Cl'm't.*

Feb'y 6, 1855.

"In case No. 812, Jas A. Sherbe *et al.*, for the place named 'Arroyo de San Antonio,' the counsel for the claimant filed the following motion, to wit: (here insert the motion;) which having been considered, was granted, &c., (as in No. 45, above.)"

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California.

I, John C. Hays, U. S. surv. gen'l of California, and, as such, having in my custody the papers of the late board of land commissioners, do hereby certify the foregoing to be correct copies:

First. Of the motion to dismiss, filed in case No. 45 on the docket of said board.

Second. Of the order dismissing said cause, as found entered in rough minute-book of proceedings of commissioners.

Third. Of motion to dismiss, filed in case No. 812 on docket of said board.

Fourth. Of order dismissing same, as found entered in minute-book above mentioned.

Given under my hand and official seal at the city of San Francisco, Cal., this 21st day of March, 1857.
[SEAL.]

JOHN C. HAYS,
U. S. Surv. Gen'l.

Filed March 21st, 1857.

W. H. CHEVERS, *Deputy.*

Testimony of R. C. Hopkins.

U. S. DISTRICT COURT,
Northern District of California:

THE UNITED STATES
vs.
CHARLES WHITE. } No. 346.

Testimony taken in open court on the 23d March, 1857.

Present, Hon. Ogden Hoffman, judge, and the U. S. dist. attorney, and Volney E. Howard, esq., counsel for the claimant.

72 R. C. Hopkins, being duly sworn, deposes and says: I am clerk in the office of the surveyor general of the United States for the State of California, and the same witness who testified in this case before. I have with me the Miranda espediente, the Jimeno index, the original map and grant, filed in this case before the land commission, and referred to in my former deposition, and now produce them before the court.

The petitions for lands, and the maps thereof, are contained in the espedientes on file in the archives, and are nowhere else found.

R. C. HOPKINS.

Sworn to and subscribed in open court, this 23d day of March, A. D. 1857.

W. H. CHEVERS,
Dep'y Clerk.

Filed March 23d, 1857.

W. H. CHEVERS, *Deputy.*

Certified copy of deposition of Jos. L. Folsom.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *April 14th*, 1854.

This day personally came before Peter Lott, a commissioner appointed to take testimony to be used before the board of U. S. land commissioners, Joseph L. Folsom, a witness on behalf of the claimant in case No. 18 on the docket of said board, wherein Antonio Maria Osio is claimant, and said witness being duly sworn, on oath deposed in the English language as follows, to wit:

The U. S. law agent is present.

Questions by the attorney for claimant.

1st question. What is your name, age, and place of residence?

Ans. My name is Joseph L. Folsom; my age 35 years; my residence San Francisco.

2d question. State whether at any time you obtained from the Spanish archives of this State a book of record of titles from the years 1836 to 1844? If yea, when, and for what purpose; and where is that book now, or what became of it?

Answer. A few weeks before the occurrence of the May fire of 1851 in this city a book of Spanish records was put into my hands by a staff officer of Gen'l Persifer F. Smith, of the U. S. army, then the commanding general in California, to be used as evidence in a suit then pending in the superior court of this city, being Leese & Vallejo *vs.* Clark.

73 The book was brought from Benicia, where the archives were then kept, and it formed a portion of those archives. It was used in evidence in the case referred to; was afterwards in a few days returned to me, and afterwards was destroyed by fire on the 3d of May, 1851, with nearly all the contents of my office. To the best of my recollection it contained entries as far back as the year 1837, and down as late as 1844, of synopses of grants of land, embracing names of grantees, dates, description of grants by name or in brief, &c., being a mere synopsis. The book was offered in evidence on the trial spoken of, as I suppose, as a matter of opinion, in support of some claim whereof the book bore record of some grant in which the parties were interested; *by* business was merely to identify the book as being of the archives, which I did.

I was at that time a staff officer in the U. S. army, on duty in this city, and as such the book was intrusted to me.

Cross-examined by the U. S. Law Agent.

1st question. What officer placed the book in your possession?

Answer. Capt. Frederick G. Steele, an aid-de-camp of General Smith.

2d question. Is the fact of that officer placing the book in your possession, and the information he gave you, the only means you have of knowing the book to be an authentic record?

Answer. The only personal means of knowledge; I never saw the book before.

3d question. How long was the book in your possession?

Answer. Perhaps one week—perhaps 3; I cannot tell precisely; it was in the hands of the court about ten days; it may have been some 5 or 6 weeks from the time I received it till it was destroyed.

4th question. Did you at that time understand well the Spanish language? if yea, state to what extent you examined the book.

Answer. I could then with some little difficulty read the Spanish language; but I made no examination of the book except to glance through it cursorily to find the record of the case which was in question in the court; I did that as a matter of curiosity merely, and had no interest in the case.

5th question. Describe what kind of a book it was.

Answer. It was a volume about the size of foolscap paper, say about ½ inch thick; I do not think it would have contained over 200 pages. It was bound in pasteboard covers, with either cloth or leather on the outside. It was not apparently newly bound, but seemed soiled by use; it was written on a yellowish paper, such as was in use among the Spanish people.

6th question. What other grants do you recollect, besides the one mentioned, as being entered in the book?

Answer. I do not recollect a single one. The entries were
74 in the nature of an abstract, each entry embracing some 6 or 8 lines. I looked at it once in my office, and again in the court, with reference to the case spoken of, and made no other examination of it.

The mode in which the book was kept struck me with some force, as it was the first book of the Spanish archives I had seen.

7th question. Having examined but one case, how did you learn the points of time within which the record was embraced, as before stated by you?

Answer. It was because I was struck with the small size of the book, and in looking through it, according to my present recollection, there were entries in it running from 1837 to 1844. The book struck me as peculiar in its form and appearance as a book of record, being so different from those I had been accustomed to see. There was some writing on a fly-leaf of the book, and my impression is, that it gave some indication of what the book contained. My actual examination of the book was very cursory, and I can now only give my impressions of its contents, not feeling very positive as to the minute particulars of its contents. The grant for which the book was used in evidence on that occasion was of a date before 1840.

8th question. What was the character of the entry you examined?

Answer. It was a mere synopsis of the date, names of grantor, or officer granting, and the grantees, the name or description of the place granted, the quantity of land and its locality, &c., embracing in all perhaps 6 or 8 lines of writing.

Re-examined by attorney for claimant.

1st question. Do you recollect whether you was required by a subpœna or otherwise officially to produce the book before the court?

Answer. I was notified by some officer of the court—my impression is, it was the clerk of the court—when the book would be required; I do not recollect certainly how I was called upon, but I understood myself to be required officially to produce the book. The clerk said he would be responsible for its safe-keeping while in the hands of the court, and he returned it to me when they were done with it.

2d question. Where is Capt. Frederick G. Steele, of whom you have spoken?

Answer. I do not know; I think he is not in California; I believe he is somewhere in New York, and still in the army.

Cross-examined by the U. S. Law Agent.

1st question. How was the grantor described, and who was named as such in the entry which you examined?

Answer. I cannot tell now whether it gave the name or title of the grantor, and do not recollect who was the grantor.

75 2d question. How could you ascertain from those entries whether the grants were made by governors or alcaldes?

Answer. I do not profess to know how they were made in this particular case; I recollect there was something about it which con-

veyed to my mind and left the impression that the grant emanated from headquarters at Monterey, though I cannot now remember what that was. The alcalde grants I have seen have been a full record of the grant, and the entries in this book were in brief, as I have before stated. I saw no full records in this book spoken of.

3d question. Can you state the contents of the entry mentioned in relation to the grant to Leese & Vallejo, as to where the land was situated, and by whom the grant was made?

Answer. I do not remember by whom the entry represented the grant to have been made; I have before answered as to my impression upon that point. The place or situation of the land I can recollect was called or described as at the Russian landing or embarcadero, as embracing some hundreds of varas, and being on the bay shore. It was granted to Jacob P. Leese and Don Salvador Vallejo.

J. L. FOLSOM.

Subscribed and sworn to before me on this 14th day of April, A. D. 1854.

PETER LOTT,
Commissioner for taking testimony, &c.

It is hereby stipulated and agreed by and between the U. S. law agent and Volney E. Howard, esq., attorney for claimants in case No. 74, that the foregoing deposition may be considered as taken, and may be used and read in evidence in cases No. 74 and No. 11, on the docket of the commission.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California.

I, Jno. C. Hays, U. S. surv. gen'l for California, and as such having in my custody the papers of the late board of U. S. land commissioners to ascertain and settle the private land claims in California, do hereby certify the foregoing to be a correct copy of the deposition of J. L. Folsom, on file in case No. 18 on the docket of said commissioners.

(*Endorsed:*)

No. 18. Antonio Maria Osio.—Island of Angeles.
Deposition of J. L. Folsom, taken before Com'r Peter Lott.
Filed in office April 14th, 1854.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 4, p. 226.

GEO. FISHER, *Sec'y.*

76 Given under my hand and official seal at the city of San Francisco, Cal., this 12th day of March, 1857.

[SEAL.] JOHN C. HAYS,
U. S. Surv. Gen'l Cal.

Endorsed: Filed March 23d, 1857.

W. H. CHEVERS, *Deputy.*

[*Here follows map—original, page* 77.]

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Mexican and Spanish territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed page of tracing paper, numbered from one to , inclusive, exhibit a true and accurate copy of the map attached to and forming part of the expediente in the application of Juan N. Padilla for a place called "Roblar de la Miseria."

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this 12th day of March, 1857.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the surveyor of public lands in California, and for other purposes," approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California;) and any copy or extract from the plats, field-notes, or other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor 77 general, shall, in all judicial matters, have the same force and effect as the original."

Endorsed: Filed March 23d, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Copy of original grant to M. G. Vallejo for Petaluma Ranch.

Sello Primero—Ocho Pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en al departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MANUEL CASTANARES.

MICHELTORENA.

{ Ad'a Marit'a de Mont'y. Seal. }

Manuel Micheltorena, General de Brigada de Ejercito Mexicano, Ayudante General de la Plana Mayor del mismo, Gobernador, Comandante General é Ynspector del Departmento de Californias.

Por cuanto el Coronel D. Mariano G. Vallejo ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Petaluma colindante al S. con el Estero de Olompalie al N. y E. con el rio de Sonoma, Agua Caliente y Guilucos y al P. con las lomitas del Roblar de la Miseria; practicadas previam'te las dili-

gencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos usando de las facultades q. me son cenferidas á nombre de la nacion Mejicana, he venido en concederle el terrano mencionado declarandole la propiedad de el por las presentes letras sugetandose á la aprobacion de la ex'ma junta departamental y bajo las condiciones siguientes:

1a. Podra sercarlo sin perjudicar las travesias caminos y servidumbres; lo disfrutará libre y esclusivam'te destinandolo al uso ó cultivo que mas le acomode.

2a. Solicitará del juez respectivo que le dé la posecion juridica en virtud de este despacho por el cual se demarcarán los linderos en cuyos limites pondra demas de las majoneras algunos arboles frutales ó silvestras de alguna utilidad.

3a. El terreno de que se han donacion es de diez sitios de ganado mayor poco mas ó menos segun esplica el diseño que corre agregado en el espediente respectivo. El juez que diere la posecion lo hara medir conformé á ordenanza quedando el sobrante que resulto á la nacion para los usos conven'tes.

4a. Si contraviniere á estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia mando que serviendolo de titulo el presente y teniendose por firme y valdero se tome razon de el en el libro
78 respectivo y se entreque al interesado para su resguardo y demas fines

Dado en Monterey, á veinte dos de Octobre, de mil ochocientos cuarenta y tres.

MANUEL MICHEL'O.

MANUEL JIMENO.

Queda tomada razon de este despacho en el libro respectivo a f'o 1a del libro seg'do.

JIMENO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having on file in my office, and in my charge and custody, the records and papers of the late board of United States land commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the three preceding and hereunto annexed pages of tracing paper, numbered from one to three, inclusive, exhibit a true and accurate copy of part of a document on file in case No. 250 on the docket of said commissioners, endorsed—

"No. 250.—M. G. Vallejo, Petaluma.

Exhibit annexed to the deposition of José de la Rosa, taken before Com'r H. J. Thornton, (R,) June 2d, 1852.

Filed in office June 2d, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Book of Rec. of Ev., vol. xvi, pages 662 to 666.

GEO. FISHER, *Sec'y.*"

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this 13th day of March, 1857.

JOHN C. HAYS.
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress providing for the survey of public lands in California, and for other purposes, approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California;) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original."

Endorsed: Filed March 23d, 1857.

W. H. CHEVERS, *Deputy.*

79 *Translation of grant for Petaluma Rancho to M. G. Vallejo.*

Stamp First—Eight Dollars.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year one thousand eight hundred and forty-three.

(Signed) MANUEL CASTANARES.
(Signed) MICHELTORENA.

[L. S.]

Manuel Micheltorena, general of the brigade of the Mexican army, adjutant general of the staff of the same, commanding general and inspector of the department of the Californias.

Whereas Colonel Dn. Mariano G. Vallejo has, for his own personal benefit and that of his family, petitioned for the land known by the name of Petaluma, bounded on the south by the estero of Olompali, north and east by the river of Sonoma, Agua Caliente, and Guilicos, and west by the hills of the oak grove of the Miseria, the proper measures and examinations being previously made as required by laws and regulations, using the faculties conferred on me, in the name of the Mexican nation, I have granted him the aforesaid land, declaring to him the ownership of it by these presents, subject to the approval of the most excellent departmental junta, and under the following conditions, viz:

1st. He may enclose it without prejudice to the crossings, roads, and servitudes, and enjoy it freely and exclusively, making such use or cultivation of it as may best suit him.

2d. He shall request the proper magistrate to give him juridical possession in virtue of this title, by whom the boundaries will be

marked out, in the limits of which, besides the landmarks, he shall place some fruit or forest trees of a useful character.

3d. The land of which donation is made is ten square leagues, a little more or less, as shown by the map which goes attached to the respective espediente. The magistrate who may give possession will cause it to be measured in conformity with the ordinance, leaving to the nation, for its convenient uses, the surplus which may result.

4th. If he shall contravene these conditions he will lose his right to the land, and it will be subject to denouncement by another person.

In consequence, I order that, this present serving him for a title, and being held as firm and valid, note being made of it in the proper book, and it be delivered to the person interested, for his security and other purposes.

Given in Monterey, on the twenty-second of October, one thousand eight hundred and forty-three.

(Signed) MANUEL MICHELTORENA.
(Signed) MANUEL JIMENO, *Sec'y.*

80 Note has been made of this title in the respective book, folio 1, of book second.

(Signed) JIMENO.

Pio Pico, governor ad interim of the department of the Californias.

The most excellent departmental assembly, in session of this day, has decreed as follows:

Approved the grant made by the superior government of the department; *is* title issued on the 22d of October, 1843, in favor of citizen Mariano G. Vallejo, of ten square leagues, in the place known by the name of Petaluma, next to the town of Sonoma, in entire conformity with the law of August 18th, 1824, and article 5th of the regulations of November 21st, 1838; and for the security of the party, Don Mariano G. Vallejo, I thus make it known.

Given in the city of Los Angeles, on this common paper, for want of stamped, on the twenty-sixth day of September, one thousand eight hundred and forty-five.

(Signed) PIO PICO.
(Signed) JOSÉ MA. COVARRUBIAS, *Sec'y.*

Endorsed: Filed March 23d, 1857.

W. H. CHEVERS, *Deputy.*

Opinion delivered by honorable Judge M. H. McAllister, August 10th, 1857.

THE UNITED STATES
vs.
ELLEN E. WHITE, adm'x.

The petition in this case was presented by Charles White to the land commissioners, and the claim was confirmed.

Upon the decease of the petitioner, Ellen E. White, as his administratrix, became the party claimant.

The claim is founded on a provisional grant to one Antonio Ortega, on the 10th of August, 1840. On the 12th June, 1840, Ortega petitioned Gov. Alvarado for the land named Arroyo de San Antonio, bounded on the south with the rancho of Camilo, on the north with the oak grove of the Miseria, on the east with the of Petaluma, and on the west with the laguna of San Antonio. On the 20th of June following the governor referred said petition to the local authority for the necessary information, and on the 30th July, in the same year, report was made in favor of the petition; whereupon, on the 10th Aug., 1840, a grant or document was issued to Ortega for the land, bearing these words: "with the understanding that, to expe-
81 dite the respective title and to regulate the necessary documents by which he shall mark out his lines and perform those necessary acts, he shall make a map as required by law, which he will present opportunely." The above constitutes the documentary title of the claim.

To prove the genuineness of foregoing documents the testimony of Gov. Alvarado himself is adduced. This witness must have committed wilful perjury if the signatures to these documents are not genuine. He swore positively to the signature of Ortega to the petition, of that of M. G. Vallejo to the informé, and of his own to the marginal decree and the subsequent grant. M. G. Vallejo was also sworn in behalf of the claimant; he swears that the land in question was granted to Ortega by Gov. Alvarado; that said Ortega applied to witness, who was director of colonization for the northern frontier for permission to settle on the land, which permission was granted to him by witness; that Ortega subsequently, in 1840, obtained a grant from Gov. Alvarado, and the witness further swears "he has seen the grant."

In relation to this grant Alvarado further deposes that the document marked "B. P. L.," being the petition, informé, and grant, together with another document, marked "A. P. L.," being the map filed in this case, were, in 1840 or 1841, brought by Ortega to Monterey and left with witness, and kept by him for Ortega till about 1848, when he called for them, and they were returned to him by witness.

José de la Rosa deposes positively that, in 1839, he made a map of the land for Ortega, and he identifies the map filed in this case, and marked "A. P. L.," as the one he made, and that subsequently, in 1840, Ortega got the grant for the land.

This witness may have been, and from the other testimony in the case it is probable is, mistaken in the year; but he swears to having made a map, and that he saw the grant a short time after the petition had been presented in the house of Ortega on the ranch.

Wm. A. Richardson, another witness, deposes to the fact that a grant was made *to* the land to Ortega in 1840.

Now these witnesses, Alvarado, Vallejo, Rosa, and Richardson have all sworn falsely, if, as is contended by the government, the grant of Alvarado was forged or antedated.

The evidence on which the allegation of forgery rests is:

First. The fact that the address on the petition is in a different

colored ink from the body of the petition, and that the date of the marginal decree had been altered from 1841 to 1840.

It is true that the name of the grantee was left blank, by mistake or omission, and filled in with different colored ink, but the petition was signed by Ortega, and the color of the ink with which the filling up is made corresponds with that used in the body of the grant.

82 The alteration of the date, the deed taking effect from its delivery, would have no material influence in this case. There could be no motive to change the date, for Alvarado was governor during both the years 1840 and 1841; and, lastly, the alteration of the date is with the same colored ink with which the body of the grant is written.

Second. The second item of testimony relied on to establish a forgery in the grant to Ortega in 1840 is the allegation that, in 1844, a grant was issued to one Juan Miranda by Gov. Micheltorena for the same land. But it must be borne in mind that the original grant to Miranda has never been produced, nor has any testimony been adduced to prove it has ever existed. The archives disclose the existence of a petition from Miranda, a report from the local authority in its favor, and an unsigned grant.

There is no doubt that an attempt was made by Miranda to obtain a grant for this land. Not much reliance is to be placed upon the fact that the copy grant in this expediente was unsigned. Many instances of similar cases occur. But in this case one of the witnesses, "De la Rosa, a witness for claimant, swears that Miranda applied to him in 1844 to draw up a petition; that he did so for Miranda; that witness, at request of Miranda, presented the petition to the governor, who postponed making the grant, and that the same never was signed, on account of the civil disturbances and the breaking out of the revolution about that time."

The testimony of this witness is to be received *cum grano salis.* It is contradicted in several instances, and his own testimony represents himself as the willing agent of Miranda to defraud Ortega out of his rights, out of his grant of 1840, and which was known at the time to him, if other portions of his testimony are to be believed. But he seems to be confirmed in this particular instance by the testimony of one of the witnesses for the government, Francisca Miranda, the daughter of Juan Miranda, who says, "My father went to Monterey for the purpose of obtaining a title from the general government, but, in consequence of being taken sick, he was unable to attend to it, and came away, leaving the papers in the hands of Salvador Vallejo; that Salvador Vallejo said he had sent the title to that ranch by Don Manuel Vaca, but the title never was received by my father." And at this point, it is to be borne in mind that the original grant to Miranda never has been produced, nor has any witness been produced who says he ever saw it.

If the grant never had issued or been delivered to Miranda, no rights under it accrued to him; but whether the grant was signed and delivered or not, is not very material, for if a genuine grant had been issued for the land in 1840, and no forfeiture under the Mexican law

had been operated, the issue of a junior grant for the same land could not divest the rights of the elder grantee.

83 This is clearly the principles of the Mexican law, and distinctly affirmed by the testimony of witnesses in this case.

But the fact that a subsequent grant for land previously granted is evidence to some extent to be considered when investigating the genuineness of the prior grant.

The weight to be attached to this testimony will be ascertained by reference to the testimony of Jacob Leese, who stated he was alcalde of Sonoma in 1844 or 1845, when Juan Miranda applied to witness with the customary petition for the land, which witness understood to be vacant; this understanding the witness swears rested entirely on the allegation in the petition of Miranda, and the fact that he (Miranda) was in the actual possession of the premises. In answer to the question whether he would have represented the land to be vacant if he had known that Miranda occupied the land for another person, he replied, "of course I should not; I should await an investigation until it was ascertained."

This witness further states that he knew nothing of the Ortega grant at that time, and that his report was founded on the actual occupation of the land and the suggestion in the petition of Miranda. This testimony ascertains that the report that the land was vacant was made without reference, and in ignorance of a prior grant, and based exclusively on the act and allegation of Miranda. It does not touch the question of forgery.

The last item of evidence relied on to sustain the allegation of forgery is certain parole testimony.

Gorham H. Nye, a witness for the gov't, swears he had a conversation with Miranda, in which the latter claimed the ranch as his own, and showed his title to witness; this he swears was in 1838, and the title bore date in the same year; Miranda's title is dated same eight years afterwards.

Another witness, José Ramon Mesa, states he was raised by Miranda, and swears to occupancy by him, and that he was owner, and also proves that the cattle on the ranch were Miranda's.

Francisa Miranda, the wife of Ortega, was also a witness of the government, and she swears that her husband never had any claim to the ranch. In relation to this witness it is proper to observe that a separation between her husband and herself had taken place, and continued up to the time of her giving her testimony. If that testimony is to be believed, all the witnesses for claimants have foresworn themselves. But having been deeply injured by her husband, or having believed herself to have been so, her testimony is characterized by the spirit of a woman who believes herself deeply wronged.

José S. Berreyesa, another witness for claimant, states he knew the ranch from 1837 to 1849, during which time it was claimed and occupied by Miranda. The next witness for the government is John Martin. He states he was in occupation of the ranch from

84 1832 to 1837, under a writing from Gen'l Vittoria, which amounted to a loan of the land; but he destroyed this writing in 1837, when he moved from thence to another ranch, for which he

got a title. The witness states he burned the paper, *so that Miranda*, and that Miranda went into possession. He further states he delivered possession to Miranda before the marriage of Ortega to Miranda's daughter.

The last witness for the gov't, who speaks to the point, is Joel P. Walker, who states a conversation he had with Ortega, which took place in Oregon, wherein Ortega said he had spoken to the authorities in California about a piece of land; had not gotten any papers for it, but thought he could get them on his return to California. This witness further testifies to a conversation with Ortega after the return of both to California, in which Ortega said he had gotten his papers for his land; that Ortega showed the papers to witness; that there were two papers; one was his petition asking for his land and a grant for the same, and the other paper was a map, to which there was no name. The documents filed in this case were exhibited to witness, and he swears they were not those exhibited to him in 1848, after their return to Cal'a. As to document containing petition and grant, and which was exhibited to him in 1848, he states that he did not see the name of Alvarado in more than one place; it was in the first page, in the lower right-hand corner. As to the map, he states it was nothing like the map shown to him when he gave his testimony.

On his cross-examination the witness states, "he will not say he can read it, (Spanish,) for he is not a Spanish scholar;" and again, "I looked over the grant, but neither read nor endeavored to read it, as I have said Ortega read it to me. I saw the words dos sitios in it, and a good many words I did not understand; it was badly written. Ortega read it in Spanish; it was written in Spanish, and Ortega could not speak English." In his answer 22 he states he refused a donation of part of the land because he thought the papers were antedated, though I gave, says he, no reason to Ortega for objecting to the donation. Now this thought of the papers being antedated must have applied to the papers shown to the witness in 1848, which he swears are not the same papers on file in this case.

The testimony of certain witnesses was introduced by claimants to impeach the testimony of this witness, Walker. I do not deem it necessary to prosecute the issue raised as to the credibility of this witness. The kind of examination (and the only kind he was able to give, from his meagre knowledge of the Spanish, to the papers in 1848) does not enable the court to rely on his testimony in relation to the identity of these papers; nor does the fact that the one set of papers, if the thought of their being antedated be correct, fix suspicion upon the papers on file; they never were seen by the witness,
85 as he states in his 12th answer, until the day of his examination as a witness. If, on the other hand, the papers on file were the identical papers shown to the witness in 1848, what reliance is to be placed on his testimony? This witness testifies that Ortega, in his conversation with him in Oregon, stated that he had spoken to the authorities in Cal'a about a piece of land; that he had not gotten any papers for it, but thought he could get them on his return. Now, conversations and verbal statements so easily colored by misappre-

hensions, and entirely changed in their character by the omission, addition, or substitution of a word, is a species of testimony not to be relied on. If Alvarado, Vallejo, Richardson, and De Rosa, can be believed, Ortega had intercourse with the Mexican authorities about a piece of land, and although he had received no title, had the right, from what had taken place, to suppose he could get his title founded on the papers he had left in Alvarado's hands. A misapprehension of the language of Ortega, who could not speak English, by the witness, Walker, might have led the latter to the conclusion at which he came. We cannot consider the parol testimony sufficient to counterbalance the positive testimony in behalf of the genuineness of the Ortega grant. As to the Miranda grant, it can have no influence injurious to claimant on this point if their grant has been proved. And, lastly, in this case there is proof that the prosecution of the Miranda claim before the commissioners has been voluntarily abandoned. It is suggested in the brief of the attorney for the government that such abandonment was the result of fraud and collusion; this suggestion may be true, but to affect the action of this court, some evidence of the fact must be given; none such is found in the transcript.

In discussing the genuineness of the grant to Ortega, we have laid aside the testimony of Ortega, as objection was made to his admissibility; and finding it unnecessary to use his testimony, we leave the question as to his competency open. Assuming the genuineness of the Ortega grant, the question is, whether the equitable rights (for the grant did not convey a title) of the grantee have been forfeited either by the Mexican authorities or by the acts of the grantee. There was no denouncement of the land in this case; the only act of the Mexican government was (admitting the execution of the Miranda grant) the issuing of a second grant for the same land.

Juan B. Alvarado, a witness in this case, who has held various offices under the Mexican government, and that of governor and political chief from 1837 to 1842, states that after a grant had issued, and grantee had gone into possession, a second grant could have no effect. In all cases the eldest title had the preference, unless there was a denouncement, in which the case would be tried, &c.

Jacob Leese, who in his official capacity as a Mexican func-
86 tionary, made the official report in favor of the Miranda claim, states that in the above stated case "the alcalde would have reported that the land was not vacant, and that would have been his report in the case before us, (the Miranda claim;) but the fact of the former grant being concealed or contradicted by the petition, I was deceived, and if the grant was obtained from the governor through the deception practised upon the alcalde, that grant would be fraudulently obtained and would be void."

It will be observed that the testimony of foregoing witnesses was in response to questions which not only supposed the issuing of a prior grant, but the additional fact that the grantee had taken possession. The response was confined to the question propounded. But we are by no means clear that the rights of a grantee could in any case, until a notorious abandonment, be forfeited in favor of a junior grantee by

a simple grant without a previous denouncement by the junior grantee.

It will be unnecessary to decide this point, as, in the view of the evidence the court has taken of this case, it is covered by the law, as proven by the foregoing two witnesses. If, then, the rights of claimants are not be deemed to have been forfeited by the act of the Mexican government, the inquiry is, have they been by the act of the party? This is affirmed by the government on two grounds: first, the deposit of the papers by Ortega with Alvarado in 1840 or 1841; second, the removal of Ortega from California to Oregon, and his absence for some four years from California.

It is urged that the deposit of the papers by Ortega was, in fact, a surrender of his rights. To sustain this proposition, reliance is placed upon the case of Boisner v. Metayre, 5 Martin, 667, 678. In that case, a tract of land which had been in possession of defendant for a number of years was claimed by p'ffs. The title relied on by latter was an order of survey in 1789, and a confirmation by act of Congress in 1815. The adverse party relied on a survey obtained in 1795, and confirmed by the commissioners U. S. in 1812. The concession of the land in 1789 had a condition annexed to it as to the improvement of the land before the expiration of three years, and, on failure so to do, the grant was to be null. It was established by the testimony that the grantee had gone on the land temporarily, cut several acres of cane, and opened the road in front; that he never settled the land, and that at some time between the years 1785 and 1795 he surrendered his title into the hands of the commandant of Natchitoches, among the papers of whose office it was lodged in a bundle entitled "Requestes de concessions de terres reunus au domaine," where it remained until the archives of that office were delivered to the person who received possession of that place for the U. S. Now, in that case there was no dispute about the intention of the grantee to surrender, and of the government to accept; but the ground taken
87 was, that nothing short of a written declaration from the grantee that it was his intention to abandon the land could do away with the grant. The court decreed that the evidence was sufficient, and also that at the expiration of the time fixed by the grantor for the accomplishment of the conditions, upon failure thereof the grantor had the right to consider the grant null by virtue of the reservation made to that effect in the grant itself.

The case at bar is different. The Mexican grants did not contain a reservation vacating a grant on failure of conditions, but merely subjected the land granted to denouncement by another. In the case relied on there was a formal surrender to the authorities, and such surrender was accepted and filed among the documents which evidenced the cases in which surrenders had been made, and which passed with the archives to the U. S.

No one of these facts exists in the case at bar, and their existence is disaffirmed by the testimony. The attention of the witness, Alvarado, was called to the petition, informe, grant and map, and he was asked whether they were ever placed in his hands for safe keeping? He replied that in 1840 or 1841 they had been brought to Monterey

by Ortega and left in his hands, and that he kept them for Ortega until 1848, when, at request of latter, he gave them to him to be used for some purpose. Nothing is drawn out in the cross-examination, nor even an attempt made to add to or vary this testimony. The government was represented, and if there had been any intention to treat the leaving of the papers by Ortega with Alvarado as a surrender of the former's right, it is reasonable to suppose that if any explanation could have been obtained, some effort would have been made with a view to change the character of the transaction. And here it is proper to observe, that if any cross-examination could have elicited anything to change the transaction, no censure, if any can be imputed for omitting to cross-examine, can be charged on the able counsel who represent the appellant, as they were not engaged professionally when the examination took place.

Alvarado swears the papers were deposited with him for safe keeping; that he kept them for Ortega, and when called for they were returned to him. In the absence of contradictory testimony, we cannot consider this deposit of papers evidence of a surrender of his rights by Ortega; a fact which, if not to be exclusively ascertained by written testimony, should always be established by clear and reliable proof.

The second ground taken by the government is the removal of Ortega from California, and his absence for four years. It is contended, first, that such removal to a foreign country constituted an abandonment, rendered the land granted vacant, and justified
88 the second grant. To sustain this proposition, the case of Helliman *vs.* Peeples, 1 Texas, 673, and other cases from the State of Texas, have been cited. The reply to these is that they apply to foreign colonists, and were made under the colonization laws of Coahuila and Texas, and particularly under the 30 article of the colonization law of the State of Coahuila and Texas of March 24, 1825, which applies exclusively to the new settler or colonist, and declares that lands held by such persons, who shall establish themselves in a foreign country, shall become entirely vacant.

But the facts, so far as the court has been able to elicit them, do not establish a change of residence by the grantee, Ortega, and this brings us to the consideration whether the removal of Ortega was evidence of an actual abandonment of his rights of property.

As to the circumstances attending that removal, there is very conflicting testimony, and of a character so diverse that it is difficult to reconcile it. Our duty, therefore, is to try, amid the mass of opposing oaths, to get at the truth.

One fact is admitted—that Ortega was absent intermediate the date of his grant and the year 1848, during which time he was in Oregon.

As to the facts of his absence, we will first look to the testimony relied on by the government to prove an abandonment. One of these witnesses, John Martin, swears he knows the ranch known as the Arroyo de San Antonio; that he had possession of it in 1832 from Gen. Vittoria, but that the writing he had was for the loan of the land, and that he delivered the paper to Juan Miranda, in order for

him to get a title from the government. This he states in answer to the 3d question.

In reply to a subsequent question, "What became of the papers that you had from Vittoria?" he replied, "I burned them; they did not belong to any record." It was in 1837 that I burned them; I did so that Miranda might get his title to the land clear from any other claim to it.

He further states that he left the ranch in 1837, and that Miranda had permission to take possession of the land from witness, from Gen'l Vallejo, commandant on the frontier, until he could get a grant from the government.

This witness deposes that Miranda cultivated and took possession of the ranch by placing one of his sons on it, who cultivated the lands, kept cattle there, and built a house of sticks in which he lived.

In conclusion, he states that Miranda never lived on the ranch, but his son occupied it; he was the only one who lived constantly there; the father, Miranda, made occasional visits to the rancho.

It is to be observed that it was in 1837 he delivered to Miranda, or, in accordance with his subsequent answer, destroyed the papers he held, to enable Miranda to obtain a title. Now, it is certain,
89 so far as the evidence goes, that no attempt was made by Miranda to get a title until near seven years thereafter.

Again he swears that Miranda obtained a permission from Gen'l Vallejo to take possession of the land. Now we have the testimony of Vallejo himself, whose version of the transaction will be given hereafter.

Joel P. Walker is another witness for the government. We have heretofore referred to that portion of his testimony relied on to establish the forgery or antedating of the Ortega grant. In another portion of his testimony, this witness states that when in Oregon, the condition of Ortega was poor. Witness gave him blankets, took care of him, fed, clothed, and sheltered him; and he proceeds to state, "I also started him home to California on or about the fall of 1845, but he was wrecked and returned to me almost naked, and after that I kept him until the winter of 1846 or the spring of 1847, when I started him home again."

Now this testimony, coming as it does from the government, so far from fixing a change of residence on Ortega, exhibits the fact that poverty and shipwreck intervened to keep him from California, which the witness seems to have considered his, Ortega's, home.

José Ramon Meza is the next witness for the government. He is one who was married in Miranda's family. This witness swears that Miranda occupied the ranch—claimed it as his own for 19 or 20 years. During this time, cattle were put upon it, a house built upon it; and he states the fact stated by the witness Martin, that possession of the land was obtained by Miranda with the consent of Mariana G. Vallejo. Upon this point he says, I know that Miranda first occupied the rancho by the provisional consent of M. G. Vallejo, for the purpose of afterwards applying to the Mexican government for a title to it, and he concludes by stating that this is the only way by which he knew the ranch belonged to Miranda. A third witness,

José S. Berreyesa, deposes to the occupation of Miranda, and states that he considered him as occupying it in his own right.

Peter T. Sherrebak, another witness, testifies that Miranda was living on the ranch in 1842, and the hides sold by him were branded with the initials Miranda's name. This witness, together with another, Gorham H. Nye, testifies to connection had with Miranda, in which the latter said he was the owner of the ranch.

One of these witnesses, Nye, states that Miranda exhibited a document as evidence of title which he thinks was signed by Gen. Vallejo; this, of course, cannot be the title on which the claim of Miranda is based, for that is signed by Micheltorena.

The last witness to which we shall advert is Francisca Miranda. Prior to doing so it will be well to turn to a statement made by Gorham H. Nye. It was brought out on the examination, this
90 witness not having been cross-examined. The statement is, that Ortega stated to witness that he, Ortega, was going to Oregon to remain; he said he had family reasons for leaving the country; he accused his wife of inconstancy to her marriage vows, and said he was never coming back. This is the only declaration of Ortega testified to on this point; and considering the circumstances under which it is made, we cannot, in view of the other facts in the case, regard it as fixing on Ortega a change domicil, and under no circumstances can it be regarded as proof of an abandonment of his rights under his grant.

Francisca Miranda is the last of the government witnesses to whom we shall refer. This witness was the wife of Ortega, and she distinctly and positively swears that her husband never pretended to any claim whatever to the ranch, and she also swears that Miranda failed to obtain his right to the ranch from Vallejo. We have heretofore commented on the testimony of this witness. There had been a separation between herself and husband. She accused him of desertion, he accused her of infidelity; she lived with father Miranda; protected by him, abandoned by her husband, her testimony is calculated to excite distrust, breathing the spirit of hostility it does. It seems by her testimony, after the desertion of her husband, she became the mother of three children. This testimony was objected to, but when the motives which governed a party in removing or which might operate to prolong his absence are the subject matter of inquiry, we concede the testimony admissible.

The proposition sought to be sustained by the government is, that Ortega had removed his domicil from California, or that he had at least abandoned all his rights of property there. Testimony which goes to establish what were the motives of his departure, and which tends to show good reasons arising out of the cause of his departure for continued absence, we deem admissible.

We believe we have referred to all the testimony on which reliance is placed by the government to establish an abandonment. They rely upon the actual absence of the grantee and the foregoing parol testimony. We turn to the testimony of the claimants on this point, excluding that of Ortega.

Wm. A. Richardson swears that he knows the ranch; that it was

occupied by the family of Miranda, by virtue of a contract between Ortega and Miranda; that shortly all the family of Miranda left, leaving his son Theodore to occupy it; Miranda went to the ranch about two months after Ortega got the grant, and finally he swears Miranda took possession at the request and for the benefit of Ortega.

Mariana G. Vallejo is the next witness, and the one referred to by the claimant's witnesses, Martin, Mesa, Nye, and Francisca Miranda, as the person by whose permission Miranda took possession of the ranch. Now, Gen. Vallejo swears that Ortega applied to witness, as director of colonization, and that to Ortega witness gave the permission, immediately after which Ortega went into possession, taking with him his father-in-law, Juan Miranda, and his family. He states that Ortega built a house and a corral, and stocked it with cattle, furnished by witness; that when Ortega placed his father-in-law in possession, he (Ortega) was an officer in the army, and was a portion of his time in the army and occasionally to his ranch. A short time after getting permission from witness to occupy the land he says Ortega got his grant.

91

De la Rosa swears Ortega, in 1839, obtained permission from Vallejo, and did occupy the land. He further swears that when Ortega went to Oregon he left his family and Juan Miranda on the land claimed, in order that Ortega might not lose his right to the land. Finally, he swears he understood, both from Ortega and Miranda, that the latter occupied the land for the former; they both told witness so. This witness confirms the testimony of Vallejo. Did it stand alone, the contradictions in his testimony would render it unsafe to rely on.

It is the duty of the court to reconcile the contradictions of testimony as far as practicable. The two facts, to which the conflicting testimony applies in this case, are—

First. As to the fact, whether Ortega or Miranda obtained the permission of Vallejo to take possession of the land.

Second. Who did, in fact, take possession in the eye of the law.

Martin, Mesa, Nye, and Francisca Miranda state that Miranda obtained permission; but it is to be observed that no one of them, save Nye, makes anything but a general statement, that the possession was obtained by Miranda.

Gorham H. Nye does state that Miranda exhibited to him a document: "who the signer was I do not recollect; I think it was Gen. Vallejo." Now the belief of three of these witnesses—that Miranda had got the permission from Vallejo—may have been honest, and founded upon the fact that Miranda went into actual possession after the grant to Ortega, and from the additional fact, that during the absence of Ortega he did attempt, nay, perhaps succeeded in getting a grant for the land in his own name, and the same circumstances may have led them to believe that Miranda went into possession claiming for himself. These witnesses may have been honest in the expression of their belief; still such belief cannot be correct, unless we attribute wilful perjury to both Gen'l Vallejo and de la Rosa.

An actual possession of the land by the father-in-law, Miranda, a portion of his family, is not irreconcilable with the fact positively sworn to by the witnesses for the claimant. But we think the wit-

nesses' testimony favor the theory of the case which fixes the occupation of Miranda's family as that of the absent son-in-law.

92 Ortega had obtained, by a petition in his own name, a grant in his own name; he had, if Gen. Vallejo, Alvarado and de la Rosa, or either of them, is to be believed, obtained a survey of the land; had a map made. Being at enmity with his wife and her family, he did not give to them, or either of them, the muniments of his title, but deposited them with Alvarado on his departure for Oregon. That he had not abandoned his country, or his rights of property, is evidenced from the fact that he made an attempt, which was foiled by shipwreck, to return, and did actually return home, as testified to by Walker, one of the claimant's witnesses.

Finally, we cannot close our eyes to the abandonment of all claims by those who preferred a claim in behalf of Miranda. The transcript shows that an order, upon motion of claimant's counsel, was entered before the land commissioners dismissing that claim. It is suggested that this was done by collusion and fraud. There is no evidence of it before us. In the absence of such, it certainly was the duty of those who now attempt to sustain the Miranda claim to have offered stronger proof of its existence than is to be found in this case.

"The occupation and cultivation by Miranda (say the commissioners in this case) must be considered as the acts of Ortega, under whose authority they were performed. They thus complete a full compliance with the conditions of the grant, and establish his equitable right to a confirmation."

Coinciding in these views, a decree affirming the decision of the board must be entered.

Decree.

In the district court of the United States for the northern district of California.

THE UNITED STATES, appellant,
vs.
ELLEN E. WHITE, administratrix of Charles White, deceased, appellee. } No. 346.

Stated term, August 17th, 1857.

On appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California.

Decree.

This cause came on to be heard at a stated term of the court, on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of the proceedings and decision of the said board of commissioners, and the papers and evidence on which the said decision

93 was founded, and it appearing to the court that the said tran-

script has been duly filed according to law, and additional testimony having been taken, and the counsel for the respective parties having been heard—

It is, by the court, hereby ordered, adjudged, and decreed, that the said decision be, and the same is hereby, in all things affirmed.

And it is likewise further ordered, adjudged, and decreed, that the claim of the appellee is a good and valid claim, and the same is hereby confirmed.

The land of which confirmation is made is situated in the county of Sonoma, State of California, and is known by the name of Arroyo de San Antonio, being the same which was granted by Governor Juan B. Alvarado to Antonio Ortega on August 10th, 1840, and is bounded as follows: on the south by the rancho Camilo, on the north by the Roblar de la Miseria, on the east by the Estero de Petaluma, and on the west by the Laguna de San Antonio, containing about four square leagues; for a more particular description reference to be had to the original expediente and map filed among the papers in the case.

(Signed) M. HALL McALLISTER, *Judge.*

August 17th, 1857.

Endorsed: Filed August 17th, 1857.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

Order granting appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 30th day of September, in the year of our Lord one thousand eight hundred and fifty-seven. Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
ELLEN E. WHITE, adm'x of Charles White, deceased.

In this case, on application of P. Della Torre, esq., U. S. attorney, made in open court, it is ordered by the court that an appeal on behalf of the United States from the final decision of this court, rendered in said cause at the present term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed September 30th, 1857.

JOHN A. MONROE, *Clerk.*

94 *Clerk's certificate.*

I, John A. Monroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages, numbered from one to two hundred and nine, inclusive,

contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, orders, opinion, and decree filed in this office, entitled The United States, appellants, *vs.* Ellen E. White, administratrix, appellee.

In testimony whereof I have hereunto set my hand, and [SEAL.] affixed the seal of the said court, the nineteenth day of October, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

JNO. A. MONROE, *Cl'k.*

Filed 5th March, 1858.

95 MARCH 23, 1857.

At a stated term of the district court of the United States of America for the northern district of California, held at the city of San Francisco on Monday, March 23, 1857.

Present, Hon. M. H. McAllister, circuit judge, Hon. Ogden Hoffman, district judge.

THE UNITED STATES *vs.* CHARLES WHITE. — No. 346.—Cause brought on for trial.—R. C. Hopkins sworn as witness on part of the United States, and his testimony reduced to writing by the clerk.—Cause argued in part and continued until to-morrow at 11 o'clock a. m.

MARCH 24, 1857.

At a stated term of the district court of the United States of America for the northern district of California, held at the city of San Francisco on Tuesday, March 24, 1857.

Present, Hon. M. H. McAllister, circuit judge, Hon. Ogden Hoffman, district judge.

THE UNITED STATES *vs.* CHARLES WHITE. — No. 346.—Argument resumed from yesterday—was concluded and cause submitted.

AUGUST 10.

At a stated term of the district court of the United States of
96 America for the northern district of California, held at the city of San Francisco on Monday, August 10, 1857.

Present, Hon. M. H. McAllister, circuit judge, Hon. Ogden Hoffman, district judge.

THE UNITED STATES *vs.* ELLEN E. WHITE, adm'x. — No. 346.—Opinion delivered by Judge McAllister, confirming claim.

97 *Order to file mandate U. S. Sup. Court.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in

the city of San Francisco on Friday, the 25th day of January, in the year of our Lord one thousand eight hundred and sixty-one.

Present, the honorable Ogden Hoffman, district judge.

THE UNITED STATES *vs.* CHARLES WHITE. } D. C. 346.—L. C. 558.—"San Antonio."

And now, at this day comes Calhoun Benham, esq., U. S. attorney, and presents the mandate of the Supreme Court of the United States in this cause, and moves the court that the said mandate be filed, and the cause placed on the trial docket. Whereupon it is hereby ordered that the said mandate be filed, and the cause placed on the trial docket of land cases.

Endorsed: Filed January 25, 1861.

W. H. CHEVERS, *Clerk.*

Mandate, Supreme Court, United States.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] *The President of the United States of America to the honorable the judge of the district court of the United States for the northern district of California, greeting:*

98 Whereas, lately, in the district court of the United States for the northern district of California, before you, in a cause between the United States, appellants, and Ellen E. White, administratrix of Charles White, deceased, appellee, the decree of the said district court was in the following words, viz:

"This cause came on to be heard at a stated term of the court, on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of the proceedings and decision of the said board of commissioners, and the papers and evidence on which the said decision was founded; and it appearing to the court that the said transcript has been duly filed according to law, and additional testimony having been taken, and the counsel for the respective parties having been heard, it is by the court hereby ordered, adjudged, and decreed, that the said decision be, and the same is hereby, in all things, affirmed. And it is likewise further ordered, adjudged, and decreed, that the claim of the appellee is a good and valid claim, and the same is hereby confirmed."

"The land, of which confirmation is made, is situated in the county of Sonoma, State of California, and is known by the name of Arroyo de San Antonio, being the same which was granted by Governor Juan B. Alvarado to Antonio Ortega, on August 10th, 1840, and is bounded as follows: On the south, by the rancho Camillo; on the north, by the Roblar de la Miseria; on the east, by the Estero de Petaluma, and on the west, by the Laguna de San Antonio, containing about four square leagues. For a more particular description reference to

99 be had to the original expediente and map, filed among the

papers in the case," as by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States, by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-nine, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: On consideration whereof it is now here ordered, adjudged, and decreed by this court, that the decree of the said district court in this cause be, and the same is hereby, reversed and annulled, and that this cause be, and the same is hereby, remanded to the said district court, for further proceedings to be had therein in conformity to the opinion of this court. (May 4th.)

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity to the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness, the honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine.

(Duplicate.) WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Endorsed: Filed January 25, 1861.

W. H. CHEVERS, *Clerk.*

Petition of T. B. Valentine and others, and notice of motion.

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
ELLEN E. WHITE, adm'x of Charles White, dec'd. } No. 346.

To Calhoun Benham, esq., U. S. Attorney, Volney E. Howard, esq., att'y for claimant:

100 GENTLEMEN: You are hereby notified that on Monday, the 11th day of March, 1861, at 11 o'clock a. m., or as soon thereafter as counsel can be heard, I will move the court for an order, allowing Thomas B. Valentine, and others, successors in interest of Juan Miranda, dec'd, to intervene in the above-entitled cause, to the end that their claim to the land known as the rancho Arroyo de San Antonio may be heard and their rights determined by the court. The motion will be based upon the petition and affidavit hereto annexed, upon the papers and evidence on file in said cause, and upon the opinion of the Supreme Court of the United States, heretofore delivered in said cause.

Dated San Francisco, Feb'y 5th, 1861.

Yours, &c.,

JNO. B. WILLIAMS,
Att'y for Valentine et al.

Petition.

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
ELLEN E. WHITE, adm'x of Charles White, dec'd. } No. 346.

The petition of Thomas B. Valentine and others, successors in interest of Juan Miranda, deceased, by their attorney, John B. Williams, respectfully shows, that in the year 1832 one John Martin occupied the land claimed in this case, known as the rancho "Arroyo de San Antonio," under a lease from General Vittoria, then governor of the Californias; that in the year 1837 the said John Martin delivered possession of the said rancho to the said Juan Miranda,
101 who had written permission from Gen. Mariano Guadalupe Vallejo, then commandante of the northern frontier, to provisionally occupy said rancho until he could obtain a title from the governor.

That the said Juan Miranda, by his son Teodoro, built a house on the said rancho, and occupied the land with his cattle and horses.

That in February, 1844, the said Juan Miranda petitioned the then 1st alcalde of Sonoma, Jacob P. Leese, that the necessary steps might be taken to obtain a grant of the said rancho, containing three sitios, as shown on the diseño annexed to said petition; which rancho the petitioner had occupied with his cattle and horses, and by cultivation, for some years anterior, under the provisional concession made to him by General Vallejo.

That in the same month and year the said Jacob P. Leese, then alcalde as aforesaid, made his report on the margin of said petition to the effect that said rancho had been occupied some years by the petitioner, and did not pertain to any town, etc.

That in March of the same year Manuel Micheltorena, then governor of the department of the Californias, directed his secretary to report upon the matter.

That in May of the same year Manuel Jimeno, then secretary to the governor, reported favorably, and recommended that the prayer of the petitioner be granted.

That thereupon the said Manuel Micheltorena, governor as aforesaid, ordered the title to issue.

That in October of the same year the usual order of conces-
102 sion was made, and the corresponding title issued.

That the espediente of the foregoing proceedings is now among the archives in the custody of the surveyor general of the United States for the State of California, and is numbered 397.

That the said Juan Miranda continued to occupy the said rancho until the latter part of the year 1845, when he died intestate.

That his heirs continued to occupy the said rancho until August, 1850.

That in August, 1850, on the application of said heirs to the probate

court of Marin county, B. R. Buckelew and James Black were duly appointed administrators of the estate of the said Juan Miranda, deceased.

That in September, 1850, in pursuance of said appointment, the said administrators sold the said rancho, at public sale, and your petitioner, Thomas B. Valentine, became the purchaser thereof for the sum of $9,550.

That in February, 1852, your petitioner duly presented to the board of land commissioners organised in pursuance of the act of Congress, approved March 3, 1851, to ascertain and settle the private land claims in the State of California, his claim to a portion of said rancho, and his petition was duly filed and numbered 45 on the docket of said board.

That in February, 1853, one Charles White, claiming title through one Antonio Ortega, also presented his claim for the said rancho to the said board, by his attorney, E. O. Crosby, and his petition was also duly filed and numbered 558 on the docket of said board.

That in March, 1853, your petitioner, and others, also presented their claim for the whole of said rancho, to the said board, and their petition was also duly filed and numbered 812 on the docket
103 of said board.

That in February, 1855, your petitioner, under the advice of his then attorney, founded upon certain decisions before that time made by the said board in other land cases, and upon certain rulings made in said cases Nos. 45 and 812, and upon an entire misapprehension of the rights of your petitioner in said cases, moved the said board for leave to withdraw his said petitions in said cases 45 and 812, which he was afterwards allowed to do by said board.

That in June, 1855, a decree was entered by said board in case No. 558, confirming the said rancho to the administratrix of the said Charles White, then deceased.

That in December, 1855, a transcript of the record and proceedings in case No. 558 was duly transmitted by the secretary of said board to the clerk of this court, and by him duly filed and numbered 346 in the register of land cases.

That in February, 1856, notice of intention to prosecute the appeal in said case in behalf of the United States was duly filed in the clerk's office of this court.

That in August, 1857, the decree of this court, confirming the land claimed in said case No. 346, to Ellen E. White, administratrix as aforesaid, was duly entered.

That in September, 1857, an order granting an appeal in said case, in behalf of the United States, and directing a certified copy of the proceedings, etc., to be sent to the Supreme Court of the United States, was duly entered.

That in October, 1857, a transcript of the record was duly sent to said Supreme Court, in pursuance of said order.

104 That on the 25th day of January, 1861, a duplicate mandate of the Supreme Court of the United States, reversing the decree of this court in said case No. 346, and commanding such further proceedings to be had in said cause, in conformity to the opinion and

decree of said Supreme Court, as ought to be had, was duly filed in this court.

That the opinion of the said Supreme Court, to which its mandate aforesaid refers, states: "We have concluded therefore to remand the record to the district court, with directions to suspend further proceedings till the heirs or assigns of Juan Miranda, if they see fit to do so, may have an opportunity to contest the claim under Ortega, according to the provisions of the 13th section of the act of March 3d, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," and have such further proceedings as to justice and right may appertain.

That one of the provisions of the 13th section of said act is as follows: "That if the title of the claimant in such lands shall be contested by any other person, it shall and may be lawful for such person to present a petition to the district judge of the United States for the district in which the lands are situated, plainly and distinctly setting forth his title thereto, and praying the said judge to hear and determine the same, a copy of which petition shall be served upon the adverse party thirty days before the time appointed for hearing the same."

That your petitioners desire to contest the title of the said
105 claimant, Ellen E. White, administratrix as aforesaid, to the land claimed in this case, known as the rancho Arroyo de San Antonio; and your petitioners aver that their claim under the title derived from the said Juan Miranda, and hereinbefore plainly and distinctly set forth, is the only good and valid claim to the said rancho Arroyo de San Antonio.

Wherefore your petitioners pray that in conformity with the said opinion and mandate of the Supreme Court, and in conformity with the provisions of the 13th section of the said act of March 3d, 1851, they may be allowed to intervene in this cause, take testimony, produce such other and further evidence as they may be advised as necessary, and have their claim heard and right determined by this court, as between them and the United States.

Dated at San Francisco, February 5, 1861.

JNO. B. WILLIAMS,
Att'y for Valentine et al.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Thomas B. Valentine, of said district, being duly sworn on oath, says that he has heard read the foregoing petition and knows the contents thereof, and that the facts therein stated are true to the best of his knowledge and belief.

T. B. VALENTINE.

Sworn to and subscribed before me this 5th day of February, A. D. 1861.

W. H. CHEVERS,
U. S. Com.

Endorsed: Filed February 7, 1861.

W. H. CHEVERS, *Clerk.*

106 *Opinion on motion to grant Valentine leave to intervene.*

U. S.
vs.
WHITE *et al.* } No. 346.—Stated term.

APRIL 15, 1861.

The claim in this case was confirmed in the district court, and an appeal taken to the Supreme Court. The order made in that court was that the decree appealed from be set aside and annulled, and the cause remitted for further proceedings.

Among the proofs relied on by the U. S. to show the invalidity and even the fraudulent character of the grant was a grant for the same land to one Juan Miranda; a claim under this grant had been presented to the board, but was abandoned by the petitioner, and his claim withdrawn on his own motion.

The land is therefore to be deemed public land, unless the present claimant can establish the validity of the grant under which he claims.

In the opinion of the Supreme Court, as reported, it is said—

"It is clear from the evidence in this case, that as against the U. S. either Ortega or Miranda has a just claim to the confirmation of his title to the tract in dispute. But whether Ortega was landlord and Miranda his tenant, or which of the claimants has attempted to overreach the other, are questions in which the government has no interest. The U. S. officers are not bound to settle these disputes between these parties in these proceedings, nor should either party be permitted to carry on their litigation by assuming to act for the government, and thus take the advantage of their opponents by fighting
under its shield and at its expense. The district attorney of
107 California had neither interest nor authority to represent Miranda in order to defeat Ortega; nor can this court be compelled on an appeal by the attorney general to become the arbiters of disputes in which the government has no concern. The act of Congress points out the mode in which contesting claimants may litigate their respective rights to a patent from the government."

"Instead of appeal to this court to settle the rights of Miranda in a proceeding to which he is no party, the claimants under him, if there be any, should proceed in the mode pointed out by the act which provides that, &c."

The provisions of the 13th S. of the act of 1851 are then recited, and the court, after some further observations on the case, declares that "it will not affirm the decree of the district court, for it might then appear that it had decided the title of Ortega to be superior to that of Miranda, nor reverse it, for that would imply that it considered Miranda to have the better title." It therefore determined to remand the record, with directions to suspend proceedings until Miranda could have an opportunity to contest the claim of Ortega, under the provisions of the 13th S. of the act of 1851.

At a subsequent day the court, having reconsidered this order and opinion, ordered, "That the decree of the district court be reversed and the record remanded for further proceedings—and it declares,

that this last order is made that the district court may not be trammelled in its future consideration of this case on all its merits, but without intimating any opinion as to the validity of the grant to Ortega."

108 The mandate having been filed in this court, a motion is now made in behalf of parties claiming under Miranda for leave to intervene and assert his rights.

Under all the previous rulings of this court and of the Supreme Court, in this class of cases, such a motion must clearly have been denied.

In the case of the U S. *vs.* Fossatt the Supreme Court says:

"It is the opinion of this court that the intervention of adversary claimants in the suit of a petitioner under the act of March, 1851, for the confirmation of his claim to land in California, is a practice not to be encouraged."

"The language and policy of these enactments limit a controversy like the present to the U. S. and the claimant."—(20 How., 425)

Many other decisions might be quoted in which similar language is used.

But it is thought that the opinion of the Supreme Court, in this particular case, recognised the right of Miranda to intervene and assert his rights.

That in the opinion first delivered, but subsequently reconsidered, it seems to have been assumed that Miranda could intervene under the 13 S. of the act of 1851, is not denied. But the same opinion expressly declares that, *except in that way*, he has no right to appear or even be represented by the district attorney.

"The U. S. officers are not bound," says the court, "to settle this dispute between these parties in these proceedings. The district attorney had neither interest nor authority to represent Miranda

109 in order to defeat Ortega, nor can this court be thus compelled, on an appeal by the attorney general, to become the arbiters of disputes in which the government has no concern."

It cannot be supposed that the court, when holding such language, intended that this court, by allowing Miranda to intervene and assert his claim, should hear and decide the very dispute in which it says the government has no interest and which its officers are not bound to settle.

But, even if Miranda's intervention were permitted, what purpose could be served?

His claim has since been abandoned, and must be treated as if never presented.

"The statute declares that all lands the claims to which have been finally rejected, and all lands the claims to which shall not have been presented, shall be deemed, held and considered as part of the public domain of the U. S."

So far, then, as Miranda is concerned, the land must be treated as public land.

The only question in the present case which ever has been or ever could be presented to the board or to this court is, did Ortega obtain a valid grant from the Mexican government? The controversy, as is

said by the Supreme Court in the U. S. *vs.* Fossatt, is limited to the U. S. and the claimant.

How, then, can the court, in this suit, which relates exclusively to Ortega's grant, permit Miranda to assert an entirely different and inconsistent claim, which has long since been barred by the statute? Can this court, in a suit between Ortega and the U. S., enter a decree in favor of Miranda? such a proceeding appears to me wholly inadmissible.

110 It is true that the district attorney did take testimony to prove that the land claimed in this suit by Ortega had been granted to Miranda, but the motive for making this proof seems not to have been fully appreciated by the Supreme Court. "It" (the government) "cannot," says the court, "set up Miranda to defeat Ortega, or the contrary: *admitting, as it must, that either of them can show a claim worthy of confirmation in the absence of the other.*"

But this (with great deference) is precisely what the government does not admit.

Miranda's claim has been abandoned and the rights under it lost. The district attorney did not act as the representative of Miranda or with any view of enforcing his rights, but, alleging the grant to Ortega to be fraudulent and spurious, he sought to show, in proof of that allegation, that one Juan Miranda had obtained a grant for the same land, and that the occupation was that of Miranda under a grant to himself, and not as tenant of Ortega.

Certainly these facts, if established by proofs, afford strong evidence to show that Ortega did not obtain his pretended grant, and whether he did or not is the only question to determine in this proceeding. In this view the U. S. have a direct interest in the proceeding, for independently of the general duty of the government, through its officers, to expose and defeat every fraudulent claim, whether the land claimed will ultimately belong to the U. S. or to some Mexican grantee, it has here the additional motive for defeating Ortega's claim, furnished by the fact that it is the only one which covers the land in question, Miranda's having been withdrawn and all others having been barred by the statute.

111 I cannot perceive, therefore, why the introduction by the district att'y of proof of the grant to Miranda, and his occupation under it, and not under Ortega's alleged title, was not in all respects pertinent and proper.

But the court seems also to have considered that Miranda could intervene in the proceedings under the 13th S. of the act of 1851, and yet, in the opinion first delivered, it declines either to reverse or affirm the decree of this court, but remands the cause with directions to suspend proceedings until he can have an opportunity to do so.

The section in question undoubtedly authorises any person contesting the title of the claimant to present a petition to the district judge, setting forth his title, and the judge is empowered to enjoin the party at whose instance the claim has been confirmed from suing out a patent for the same until the title thereto shall have been finally decided," &c.

But it is clear from the language of this section that the lands, the

title of the claimants to which is thus allowed to be contested, are lands to which the claim has been confirmed. The interposition of the district judge is merely to prevent the patent from issuing, which could only be done after confirmation and survey.

If, then, the original order of the Supreme Court had stood, and the claim been neither rejected nor confirmed, the somewhat embarrassing question would have arisen whether any petition could be presented under the 13th section, there being as yet no final confirmation in favor of any claimant of the lands.

Again, it is open to grave doubts whether the statute was not intended to apply solely to cases of contests of persons holding
112 derivative titles under the same grant; or, if it is not to be confined to such cases, whether it can be construed to embrace cases, where the contestant claims under a Mexican grant which has never been presented to the board, or which has been finally rejected.

It will be observed that no power is given to this *court* finally to decide between the confirmee and the contestant.

The authority given by the section is to be exercised by the district *judge* and not by the court. No power to summon juries, &c., is conferred, and the whole proceeding is shown by the act, and proved by the debates of the Senate, when it was adopted, to have been intended merely to give the judge authority to stay the issuing of the patent, until the questions of private rights could be decided by the ordinary tribunals.

The act was even amended in the Senate, in order that, in deference to constitutional objections, the functions of the judge might be thus limited.

If, then, a person, who claims under a title which has never been presented, or which has been finally rejected, can enjoin the issuing of the patent to a confirmee, under a different grant, and can submit his own title to the State courts for adjudication, those tribunals will take jurisdiction of equitable claims against the U. S., which the Supreme Court has repeatedly declared could not be noticed by any tribunal, either State or federal, except those specially authorised to adjudicate them; and they might even review and reverse
113 a final decision of the board, of this, or of the Supreme Court, by which a particular grant had been declared invalid, or they might take cognizance of a claim which had been barred by the statute.

If, then, Miranda can, under the 13th S., obtain an injunction, staying the issuance of a patent to the claimants under Ortega, (in case they obtain a confirmation,) the proceedings must either prove utterly abortive and the injunction be dissolved, because his title to the lands cannot be decided or set up in the State courts, or else those courts will pass upon, and, perhaps, sustain a claim which has been abandoned before the board, and is now barred by the statute.

It is possible that the Supreme Court have interpreted the words of the act "all lands the claims to which shall *not* have been presented, &c., shall be considered part of the public domain," to mean lands to which *no claim* has been presented, and that, therefore, if

any claim has been presented, though forged and invalid, any person claiming under an entirely different grant, and which has never been presented to the board, may, by some proceeding, under the 13 S., assert his rights, and procure the judicial recognition of his title.

It is only by construing the act in this way that Miranda's rights can, in the present case, be saved.

But no such construction of the act of 1851 has ever been adopted by this court, or even suggested at the bar.

If such be its true interpretation, it is much to be desired that it may at an early day be so declared by the Supreme Court.

But even on this construction of the law, Miranda can have
114 no right to intervene until the final determination of this suit in favor of Ortega.

For, as has been already remarked, the lands the title to which the contestant may dispute, under the 13th section, are lands *confirmed* to a claimant.

If, then, Ortega's claim be rejected, how can Miranda assert his rights in any proceeding under that section? or how present a petition to the judge, praying an injuction against the issuing of the patent to the claimant, when the claim has been finally rejected, and no patent can, in any court, be issued for it?

But even if so anomalous and extraordinary proceeding could be had, and by means of it Miranda might establish his title as against the U. S. in a State court, the singular result would occur that a person claiming lands under a Mexican title, whose rights had been lost by his failure to comply with the statute, and whose claim is barred, is saved, and allowed to assert his abandoned and outlawed claim, merely because some other person has chosen to present a wholly distinct claim for the same, founded on a different grant, which has been found to be a forgery, or for other reasons invalid.

It would seem that no rights to land under a Mexican grant ought to be either saved or lost by the circumstance that a stranger has seen fit to set up a fraudulent and invalid pretension to the same lands.

I have presented these considerations in order that the at-
115 tention of the Supreme Court may be drawn to the subject, and in the hope that it may see fit more fully to define and explain the meaning of the—of some of the observations, in the opinion referred to for the guidance and instruction of this court in these most important cases.

The motion for leave to intervene is denied.

Endorsed: Filed April 15, 1861.

W. H. CHEVERS, *Clerk.*

Order denying motion of Thomas B. Valentine for leave to intervene herein.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Monday, the 15th day of April, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
ELLEN E. WHITE, adm'x. } No. 346.

And now at this day, the motion heretofore made by Thomas B. Valentine for leave to intervene herein, upon his petition, under the 13th section of the act of Congress approved March 3d, 1851, entitled "An act to ascertain and settle private land claims in the State of California," having been argued by the respective counsel, and due consideration had, it is ordered that the said motion be, and the same is hereby, denied.

Endorsed: Filed April 22, 1861.

W. H. CHEVERS, *Clerk.*

116 *Stipulation associating Crocket & Crittenden with counsel for claimants.*

In the district court of the United States for the northern district of California.

UNITED STATES
vs.
ELLEN E. WHITE, adm'x of Charles White, deceased. } No. 346.

It is hereby agreed that Crockett & Crittenden be associated with Volney E. Howard, esq., as attorneys of record for the claimant in the above-entitled cause, and that an order of court be entered to that effect.

San Francisco, 29 April, 1861.

V. E. HOWARD.
BENHAM, *U. S. Att'y.*

Endorsed: Filed May 8, 1861.

W. H. CHEVERS, *Clerk.*

Order associating Crockett & Crittenden with counsel for cl'ts.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San *San* Francisco, on Wednesday, the eighth day of May, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
ELLEN E. WHITE. } No. 346.

On reading and filing stipulation, and on motion, it is ordered by the court that Messrs. Crockett & Crittenden be associated
117 with Volney E. Howard, esq., as attorneys for the claimant in the above cause.

Endorsed: Filed May 8th, 1861.

W. H. CHEVERS, *Clerk.*

1589

Deposition of R. C. Hopkins, U. S. witness.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* ELLEN E. WHITE, adm'x. } In land cases.—Dist. court, No. 346.—Land com., No. 558.

Be it remembered that on this 16th day of July, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California, to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of the United States in the above entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Volney E. Howard, for claimant; Wm. H. Sharp, U. S. att'y, and J. J. Williams for United States.

Questions in behalf of the United States.

Question 1st. State your name, age, place of residence, and occupation.

Ans. 1. My name is R. C. Hopkins; I am over 21 years of age; I reside in San Francisco; I am keeper of the archives in the office of the U. S. surveyor general; have occupied said position since 1855.

118 Ques. 2. Have you examined the archives, as requested, to ascertain whether or not there is any espediente there corresponding to the grant filed in this case, or any note or memorandum whatever indicating the existence of such a grant? If yea, state with what results.

Ans. 2. I have examined the archives for that purpose, and have not found therein any espediente of this grant, or any note or memorandum in relation thereto.

Ques. 3. By whom were the papers in this case, purporting to be originals, produced and filed in the late U. S. land commission?

Ans. 3. By Charles White, the claimant in the case.

Ques. 4. Of what do those papers consist? State their dates, and by whom they purport to be signed.

Ans. 4. They consist, first, of petition dated 12th of June, 1840, signed Antonio Ortega; second, a marginal order of Governor Alvarado, dated 20th June, 1840 or 1841, I can't tell which, and signed by said Alvarado; third, a report of M. G. Vallejo, dated July 30th, 1840; fourth, a map accompanying the petition; fifth, a concession, dated August 10th, 1840, signed by Governor Alvarado; that is all.

Ques. 5. Describe the paper on which these documents are written, and what water-mark it bears.

(Question objected to, unless the papers referred to are made a part of the answer and filed in court.) (Question withdrawn.)

119 Ques. 6. Have you those papers with you, from the surveyor general's office? If yea, examine them, and describe the paper on which said documents are written, and state also what is the water-mark.

(Question objected to, for the same reason as last above stated, and for the further reason that the paper speaks for itself.)

Ans. 6. I have the documents mentioned. They are written upon paper bearing the water-mark "*capellads*;" it is plain or unhabilitated paper; on the right-hand margin there are several ruled lead lines; across the top there is one, and on the left-hand margin there is also one, about two inches from the edge; the left-hand margin is pricked with holes apparently made by a needle.

Ques. 7. What would these characteristics indicate?

(Question objected to, as tending to elicit a mere matter of opinion.)

Ans. 7. I don't know what it would indicate, save that possibly at some time or other it might have been part of a book; I do not mean to say a bound book, but several sheets of paper stiched together.

Ques. 8. Have you searched the archives to ascertain whether or not they contain any similar paper? If yea, with what results?

Ans. 8. I have, and have found in the archives a great deal of this paper up to the year 1834 or 1835—not later than 1835; I, however, find a document filed in the archives in 1839 by Mr. Hartnell,

120 who was administrador of the missions; but, although the document was filed in 1839, there was writing upon it showing that it was in existence in 1834. I find none of this paper used after 1835.

Ques. 9. State if you know in whose handwriting the petition is, and the signature thereto.

Ans. 9. I think it is in the handwriting of José de la Rosa. I have, however, never seen him write, and any knowedge I have of his handwriting has only been acquired by examining the same in the archives; the signature, I think, is in the same handwriting as the body of the petition.

Ques. 10. Is the name of the petitioner in said petition, and in the first line thereof, written with the same ink as that used in the body of the petition?

Ans. 10. It is written with paler ink than the body of the petition.

Ques. 11. State if you know in whose handwriting the marginal order of reference is written.

Ans. 11. It is, I think, in the handwriting of Governor Alvarado.

Ques. 12. You have said that said marginal order is dated in 1840 or 1841; state why you did not speak more definitely.

Ans. 12. The date 1840 is written first in dark ink; the 4 and the 0 have afterwards been written over with pale ink, but whether

121 the last figure in the date was first written a 1 or an 0 I cannot say positively; it has, however, the appearance, to my eye, of having been written first a 1.

Ques. 13. How does the colour of the ink, used in making this alteration, compare with the ink with which the petitioner's name is written in the first line of the petition?

Ans. 13. I think it appears a shade darker; but this may be owing to its being written over darker ink.

Ques. 14. How does it compare with the ink in which the remainder of the said marginal order is written?

Ans. 14. It is paler.

Ques. 15. In whose handwriting, body, and signature is the report?

Ans. 15. In the handwriting of M. G. Vallejo.

Ques. 16. Are you familiar with the signatures of Gen'l Vallejo as they appear in the archives for the year 1840?

Ans. 16. I have examined his signatures, as found in the archives, during the year 1840.

Ques. 17. How do such signatures compare in style and general characteristics with the signature to the report above referred to?

Ans. 17. They differ in some respects from the signature to said report. I do not, however, find that his signatures in 1840 are uniform.

122 (Answer objected to as incompetent, without the introduction of the signatures and reports referred to.)

Ques 18. Are you familiar with the signatures of Gen'l Vallejo as they appear upon the papers and documents of the U. S. land commission, and written since the first organization of said board?

Ans. 18. I have examined the signatures referred to.

Ques. 19. In general style and appearance, to which class of Vallejo's signatures does his signature to the said report most conform; those in the archives for 1840, or the said signatures in the said land commission?

(Question objected to, without the production of the papers on which the comparison is made, as incompetent.)

Ans. 19. It appears to me that it resembles more the signatures, found in the land commission, than his signatures in the archives in 1840; however, his signature to the report in this case does not appear to be *identical* with any signature found in the land commission.

Ques. 20. Have you caused to be made, or made yourself, traced copies, exhibiting both of said classes of signatures? If yea, please produce them to be attached to this deposition marked "Exhibit Hopkins No. 1.

(All testimony based upon traced copies objected to, as it appears the originals are within reach of the court and commissioner.)

Ans. 20. I have made such traced copies, and now produce

123 them; the left-hand column are copies of his signatures made in 1840; the right-hand column are traced copies of his signatures as found in the land commission. The two signatures at the top of the page, underscored with red lines, are traced copies of the signatures of Vallejo to the report in this case.

Ques. 21. In whose handwriting is the document following the said Vallejo's report and purporting to be a concession?

Ans. 21. It is in the handwriting of Governor Alvarado.

Ques. 22. How does the ink in which it is written compare with the ink with which the said preceding documents are written?

(Question objected to, it being a proper matter of comparison from inspection of the court.)

Ans. 22. It is written in paler ink than the petition, the marginal reference, and the report of Vallejo. It very nearly resembles the ink in which the words "Ex'mo Sor. Gobernador," "Antonio Ortega, ciud'no," are written in the commencement of the petition.

Ques. 23. Do the archives show any writings of Governor Alvarado in the month of August, 1840, and particularly on the 10th day of the said month and year; and if yea, how does the color of the ink in such writings compare with the color of the ink with which the said concession is written?

(Question objected to as incompetent, without the production
124 of the archives, and also as irrelevant.)

Ans. 23. In espediente No. 223, in the archives, there is a marginal decree of Governor Alvarado, dated on the 10th of August, 1840; this decree is written in darker ink than the decree of concession in this case.

Ques. 24. Have you ever examined minutely the signatures and writing of Alvarado in the year 1840, as they appear in the said archives?

Ans. 24. I have.

Ques. 25. How do his writings and signatures, at that period, compare with the writing and signature in and to the said concession in this case?

(Question objected to for the reasons stated to the last question.)

Ans. 25. I do not find that the writing of Governor Alvarado in 1840 was very uniform; and while his writing in this decree of concession appears perhaps somewhat stiffer than the generality of his writing in 1840, yet I find among the papers of 1840 documents in his handwriting that are not without a certain appearance of stiffness, and that are also written with ink perhaps as pale as this.

Ques. 26. Answer the same question, substituting the words "said marginal order" for "said concession."

(Question objected to on the same grounds as before.)

125 Ans. 26. In relation to the marginal order, I say that it also has something of a stiff appearance, compared with the generality of his writings in 1840. Perhaps the fact of its being written in the narrow compass of the margin may have affected his handwriting.

Ques. 27. Is there anything in the appearance of said marginal order which would indicate whether it was written with a quill or steel pen?

(Question objected to as a matter of opinion, and as incompetent.)

Ans. 27. It appears to me to have been written with a hard-pointed pen, but whether with a steel pen or a quill pen I cannot say.

Ques. 27. Does not all the writing of Alvarado, found in the archives for the year 1840, manifestly appear to have been written with a quill pen?

(Objected to as leading and incompetent, without the production of the documents referred to.)

Ans. 27. I think it does.

Ques. 28. What was the general character of Alvarado's handwriting in the year 1840, stiff or flowing?

(Question objected to as leading and irrelevant.)

Ans. 28. He generally wrote rather a free and careless hand.

Ques. 29. Is there, or not, found in said archives a set of regularly numbered espedientes, upon which land grants for the year 1840 were based?

Ans. 29. There is.

Ques. 30. Are the said grants for the year 1840 based on espedientes found in the archives, written upon common or on sealed or habilitated paper?

126 Ans. 30. They are written on habilitated paper.

Question 31. State whether or not the archives show, in the year 1840 and 1841, that the secretary, Manuel Jimeno, required proper sealed paper to be furnished by petitioners before grants could be issued; if yea, state generally his requirements on that subject.

(Question objected to as incompetent to prove archives.)

Ans. 31. The archives do show such requirements by the governor or sec'y of state.

Ques. 32. Please state whether or not, after careful search in the archives, you could find any document relating to, or any reference made in any manner whatever to a grant for the Arroyo San Antonio (being the lands claimed in this case) to Antonio Ortega?

(Question objected to as leading and argumentative.)

Ans. 32. I have made a careful search in said archives, and have not found any such grant or any notice thereof.

Ques. 33. Examine the paper now shown you, and annexed to your deposition, marked "Exhibit Hopkins No. 2," and state what it is.

(Question objected to as incompetent to prove the original documents, and also an inaccurate photograph, being covered with ink, mud, and other dirty substances, and containing things not at all represented on the original documents.)

127 Ans. 33. It purports to be a photographic copy of the original papers in this case. It was photographed under my supervision.

Ques. 34. Look at said Exhibit Hopkins No. 2, and say what there is upon it that authorizes counsel for claimant to say in his objections, "It is covered with ink, mud, and other dirty substances, and containing things not at all represented on the original documents."

Ans. 34. On the left-hand margin of the first page, about the centre, the photograph shows what appears to be an ink blot—how it got there I don't know—which does not appear upon the original. The right-hand margin of the first page of said photograph is darker than the original. The round dark spots on the photograph are caused by the pins used in fastening the original to the board. The blot or line near the right-hand margin is caused by the original being broken.

Ques. 35. Is not said photograph legible, and does it not correctly exhibit the handwriting of its original body and signatures?

(Question objected to as leading.)

Ans. 35. It is legible and, correctly exhibits the handwriting of the original, body and signatures.

128 Ques. 36. Does said photograph exhibit the different colored inks as they appear on the original?

Ans. 36. It does not. I think a correct photograph should show it more than it does.

Cross-examination.—Ques. by att'y for cl'm's.

Ques. 37. Is not the original much cleaner and fairer than the photograph?

Ans. 37. The first page is decidedly so. The second page of the photograph is better than the first.

Ques. 38. Is not the photograph unusually besmeared and defaced with the acids?

Ans. 38. I do not think the photograph remarkably well taken; I do not know the cause of it.

Ques. 39. Are not the originals of the petition, order of reference, and report and concession, to which you have referred, all on one sheet of paper?

Ans. 39. They are. I recollect very well, in early times, when the two half sheets were united, but by the hard usage to which these papers have been subjected through several years of constant handling, the two half sheets became detached, and I fastened them together myself with eyelets.

129 Ques. 40. Are not the ruled lead lines at the head and margin of the original of which you have spoken apparently more recent than the writing of the instrument?

Ans. 40. They are so very indistinct that is impossible to tell with the naked eye.

Ques. 41. When did you first observe these lines?

Ans. 41. I think it is something like two or three years since I first observed them. My recollection is, that B. S. Brooks first drew my attention to those lines some two or three years ago.

Ques. 42. To what paper is the original attached in this case?

Ans. 42. It is a half sheet of ordinary foolscap that I put on myself to preserve the paper some two or three years ago.

Ques. 43. Do not the pricked holes of which you speak go through not only the original Spanish document, but the leaf attached by yourself?

Ans. 43. No; they do not.

Ques. 44. When did you first discover these stitched holes of which you have spoken?

Ans. 44. I can't remember when I first observed them.

130 Ques. 45. Did you ever examine these papers with a glass; and if yea, when did you first so examine them?

Ans. 45. I recollect that in 1857 I examined, with Mr. James F. Stuart, by means of a glass, the date 1840, and within the last few months I think we examined with a glass these lead lines.

Ques. 46. Do you recollect of seeing any pencil-marks or needle-holes in 1857?

Ans. 46. I have no recollection in connection with the matter at all.

Ques. 47. Have not these papers been very much handled and examined by adverse claimants and squatters since you have known the papers?

Ans. 47. They have been examined a great deal.

Ques. 48. Have you any doubt that wherever the signatures of Alvarado and Vallejo appear on these papers they are genuine?

Ans. 48. I have none; I have no doubt but that the names of Alvarado and Vallejo appearing upon these documents were written by them with their own hands.

Ques. 49. Was it not usual during the time of the Mexican government for petitions, orders, and concessions, like those in this case, to be written on unhabilitated paper?

Ans. 49. I think it was sometimes done.

131 Ques. 50. Please translate the last two or three lines of the concession.

Ans. 50. It is translated thus: "He will draw the diseño required by law, which he will opportunely present with this petition, which will be returned to him, that it may serve as a security during the other operations indicated."

Ques. 51. Was it the usage and custom to file such paper in the archives before final grant?

Ans. 51. I think espedientes were not usually numbered and filed in the archives until they had progressed either to final grant or rejection.

Ques. 52. Under the usage and custom of the office, when were concessions usually noted in the index?

Ans. 52. It was not customary in the office to enter espedientes upon the index until they were completed. There is only one original index to espedientes in the archives. This is merely a list of espedientes without any dates.

Ques. 53. Please give the words preceding the figures 1840, at the commencement of the document, where you say the ink appears different on the 4 and on the 0.

132 Ans. 53. Monterey, Junio 20 de.

Ques. 54. Have you any doubt that the different ink in the 4 and the 0 is the same as the words Antonio Ortega was written in?

Ans. 54. I think it is the same ink.

Ques. 55. Does not the appearance of the writing, as to freedom or stiffness, depend much upon the pen, paper, health, and nervous condition of the writer?

Ans. 55. It does.

Ques. 56. Do you know anything of the habits of the old Californian officials that might affect the appearance and style of their writings?

Ans. 56. I have understood that some of them were in the habit of indulging in a glass of generous wine.

(Foregoing question and answer objected to, on the ground that it is incompetent to prove any man's habits).

Direct examination resumed.

Ques. 57. Are not traces of some kind invariably found in the archives of genuine grants?

(Question objected to as a matter of opinion).

Ans. 57. I suppose that if a grant be made in all respects in

accordance with the laws of colonization, that there would necessarily be found some record of it in the archives.

133 *Cross-examination resumed.*

Ques. 58. In your last answer do you allude to final grants, or concessions such as the one to Ortega in this case?

Ans. 58. I refer, as a matter of course, to final grants.

Direct examination resumed.

Ques. 59. Are there not many imperfect espedientes in the archives, and are there not espedientes and other documents pertaining to provisional concessions?

Ans. 59. There are in the archives many espedientes in all stages of incipiency which are, however, not numbered or referred to in any original index. There are, likewise, espedientes of provisional grants which are classed among the finished espedientes, numbered and referred to in Jimeno index.

Cross-examination re-resumed.

Ques. 60. Is not a provisional grant complete in itself as far as it goes, and not like the petition, order, and concession to Ortega, given to the party to be returned, and subsequently archived?

Ans. 60. A provisional grant is complete after its kind. In all provisional grants there is some subsequent contingency in-
134 volved.

R. C. HOPKINS.

Subscribed and sworn to, before me, this 16th day of July, A. D. 1861.

[SEAL.] CUTLER McALLISTER,

U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

(Here follows drawing, marked original, page 135.)

135 *Exhibit Hopkins No.* 1.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

136



137 *Deposition of Jnan B. Alvarado, claimant's witness.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ELLEN E. WHITE, adm'x, &c.
} In land cases.—Dist. court, No. 346.—
—Land com., No. 558.

Be it remembered that on this 23d day of July, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California, to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Juan B. Alvarado, a witness produced in behalf of claimant, in the above entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

F. A. Sawyer, sworn interpreter.

Present: Wm. H. Sharp and J. J. Williams for the United States; Volney E. Howard for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, and place of residence?

Ans. 1. Juan B. Alvarado; I reside in San Pablo, Contra Costa co.; I am 51 years old.

Ques. 2. What office, if any, did you hold in California in
138 1840?

Ans. 2. I was governor of California in 1840.

Ques. 3. In whose handwriting is the marginal decree and signature thereto on the paper now shown you?

Ans. 3. It is in my own handwriting. It was written and signed in 1840, at the time it bears date.

Ques. 4. In whose handwriting is the concession or grant and the signature thereto on the same paper which is now shown to you?

Ans. 4. It is in my handwriting, and it is my signature. It was signed at the time it bears date.

Ques. 5. What was done with the grant after it was signed?

Ans. 5. It was delivered to the party interested—I think at the same time.

Ques. 6. Under the usage and custom of the government of Mexico in granting lands, were titles of this class filed as espedientes or entered in the book of toma de razon?

(Question objected to as incompetent, and as being a matter determined by the laws of Mexico; and for the further reason that the act of Congress of 3d March, 1851, prescribes as a rule of adjudication, not the usage and custom, but the laws, usages and customs of the Mexican government.)

139 Ans. 6. When a grant of this class required some further proceeding to make it complete, it was customary to deliver it to the party for his use before filing it among the archives as an espediente.

The papers referred to above are the original papers in this case, consisting of petition, marginal decree, certificate of vacancy, and grant.

C. McA., *U. S. Com.*

Cross-examination.

Ques. 7. Have you a distinct recollection of writing and signing the documents shown to you upon your examination in chief, or do you say that they were written at the time they bear date only from the fact that you recognize your own handwriting.

Ans. 7. I recollect to have written and signed them at the time the party interested presented the petition?

Ques. 8. Do you recollect when the party interested presented the petition to you?

Ans. 8. In the year 1840, in the month of the decree; it may be two or three days from its date; it is impossible to recollect exactly.

Ques. 9. Do you recollect the fact of signing all grants made by you; and if not, why is it that you so distinctly recollect all about this one?

Ans. 9. I could not recollect all, generally, of the grants, unless I could see them. If I saw them I could remember them.

140 Ques. 10. Would you have recollected this one if it had not been exhibited to you?

Ans. 10. I would have recollected the grant, but would not have recollected the date of the grant particularly, some sort more or less. Some cases I would have recollected particularly, others I would not.

Ques. 11. When did you see this grant for the first time after delivering it to the interested party?

Ans. 11. According to my recollection I saw it some time afterwards, when the interested party brought me the papers.

Ques. 12. In what year or month was that?

Ans. 12. I don't recollect exactly; I think it was six months or a year afterwards, more or less. I haven't it fixed in my memory.

Ques. 13. When was the next time you saw it?

Ans. 13. I can't recollect, because I saw them frequently, because they were among my private papers.

Ques. 14. In writing and signing said papers were you proceeding under the colonization laws of Mexico?

Ans. 14. In proceeding in these cases I was governed by the laws of Mexico, the particular circumstances of the individual case,

141 the customs and usages of Mexico, particularly when the individual petitioning was of Mexican family.

Ques. 14*b*. What were the particular circumstances of this case to which you have alluded in your answer last above?

Ans. 14*b*. The petitioner was a Mexican by birth; he had per-

formed many meritorious acts for his country; he was an officer in the service of his country.

Ques. 15. What other papers of Ortega besides the concession did you have in your private custody?

Ans. 15. The same that I see here—the diseño and the petition.

Ques. 16. Where and when were these papers signed, and by whom were they presented to you?

Ans. 16. The petition was presented to me in Monterey, as well as the diseño. The petition was presented to me at the time of the dates before mentioned, but the maps were not presented to me until after he returned the diseño. I told him to bring a map, and a short time after he brought a map with the petition; as near as I recollect the petition and map were presented to me by Ortega himself.

Ques. 17. How many times did Ortega present himself to you in Monterey in relation to this matter?

142 Ans. 17. In relation to this business I only recollect twice. I had seen him before on other matters.

Ques. 18. At the time of writing your marginal order for information had you seen the diseño?

Ans. 18. I don't recollect to have seen it.

Ques. 19. At the time of writing and signing the said concession did you see the diseño?

Ans. 19. I don't recollect to have seen it. I could not have seen it.

Ques. 20. After writing your marginal order, did Ortega return again to Sonoma prior to the concession?

Ans. 20. I suppose he did.

Ques. 21. Did he present himself to you again in Monterey at the date of the concession?

Ans. 21. Yes, he did. It is probable.

Ques. 22. Do you not know, positively, whether or not Ortega himself presented to you again the petition and report of Vallejo at the date of the concession?

Ans. 22. It is very natural; it is very probable.

Ques. 23. You have said that Ortega twice presented himself

143 to you in Monterey, in 1840, in relation to this grant; state what papers, if any, he presented to you on the occasion of his first visit, and what papers on the occasion of his second visit.

(Question objected to because the witness says he only recollects twice.)

Ans. 23. My recollection is that he brought with him each time the same papers, that is the petition, but the first time without any map; the second time the petition and diseño together. He might have come other times, but I only recollect those two times.

Ques. 24. Did not the colonization laws of Mexico require that a diseño should be presented with a petition to the governor?

(Question objected to, as the colonization laws speak for themselves.)

Ans. 24. I think so; I am not very certain; all the little particulars of the law I do not recollect.

Ques. 25. Why did you make a grant of land containing no description of the land granted, and in the absence of the diseño required by law to be presented with the petition?

(Question objected to because the title in evidence is not the final grant contemplated by the laws of colonization; also further objected to because the petition describes the land.)

Ans. 25. Because, as I indicated before, the particular circumstances of individual cases and of particular families, the customs and
144 usages of the country induced me to act, always expecting the support and approbation of the government, hoping that I was acting in accordance with the wishes of the government.

Ques. 26. Look at what is filed in this case as the original diseño, and say when you first saw that paper.

Ans. 26. I see it now for the first time; I have never seen it before.

Ques. 27. Is that the diseño presented to you by Ortega in 1840?

Ans. 27. I do not think it is. It resembles the other in some things. It looks something like the other.

(The document presented to the witness and referred to in the last two questions and answers is endorsed "No. 558, Charles White, San Antonio. Doc. H. H., No. 2, anx'd to the depo. of L. A. Duque de Ortega, taken before Com. Hiland Hall. Filed in office March 25th, 1853. Geo. Fisher, sec'y. A. P. L. exhibit to deposition of Juan B. Alvarado, Dec 7, 1854. Recorded in Rec. of Evid., vol. 18, p. 94. C. McA., U. S. Com.")

Ques. 28. Were none but final grants recorded in the archives?

Ans. 28. That was the business of the sec'y; I could not say.

145 Ques. 29. Were not espedientes filed in the archives in cases of inchoate and of provisional grants?

Ans. 29. Sometimes they were filed; sometimes they were taken by the parties to aid them in the steps which were to be taken by them to complete the grant. The parties were at liberty either to leave them there, or to take them.

Ques. 30. Would not the public archives have been a more proper place for the preservation of these papers (the original papers in this case) than your private custody?

Ans. 30. My opinion is that the archives is the fittest place for them, but my opinion don't govern other people; each one put them where he pleased. There are cases when they would be safer in the hands of individuals, as in the case of fire or revolution.

Ques. 31. If said papers had not been shown to you, in your own handwriting, would you have recollected the fact of executing such documents at all?

Ans. 31. I think I should.

Direct examination resumed.

Ques. 32. Under the usage and custom of Mexico, in the granting of lands, was it not frequently the practice that the map did not accompany the petition, but was presented at some future stage
146 of the proceedings?

(Objected to as leading and as incompetent.)

Ans. 32. Yes; it depended upon the consideration which the governor had for the individual and the circumstances of the case, but it frequently happened that the diseño was dispensed with upon present-

ing the petition, and was handed in at some subsequent period of the proceedings.

Ques. 33. Where it appears from the decree, as in this case, that the papers are to be returned to the petitioner for his security, until further proceedings, who was the proper party to have the custody of them until the further proceedings were had?

(Objected to as incompetent.)

Ans. 33. Either the petitioner himself, or such person as he might name as a depositary, according to the wishes of the person interested.

Ques. 34. When were they placed among your private papers, and for what reason?

Ans. 34. I can't say the time exactly; the individual wished them to remain there during the continuance of the proceedings. It might have been in 1841 or 1842 that they were placed in my hands, but I do not recollect.

Ques. 35. Of what ranch was the map or diseño that Ortega left with you on the occasion, about which you have testified?

147 (Any evidence in regard to said map is objected to unless the map be produced, or its absence be legally accounted for, and for the further reason that the map is the best evidence of that fact.)

Ans. 35. It was a map of the rancho of San Antonio.

Ques. 36. Was it the same ranch which you granted to him?

(Question objected to as leading, and for the reasons last assigned.)

Ans. 36. Yes; I think it was.

Deposition closed and read to the witness.

JUAN B. ALVARADO.

After the above deposition was signed, at the request of the att'y for claimant, the interpreter explained to the witness, in presence of the U. S. att'y, that the diseño concerning which he had testified in answers 26 and 27 was th esame about which he had testified in his deposition heretofore taken before the land commission; after which explanation and reading to him his former deposition, the witness stated that he wished to explain his said answers 26 and 27.

(Att'y for U. S. objects to the explanation of the witness being added to this deposition, but requires a new deposition to be taken.

The matter being referred to his honor Judge Hoffman, it is ordered that the witness be allowed to explain his said answers, and that this deposition be opened for the purposes of examination

148 and cross-examination upon any new matter introduced by the witness's explanation.)

The witness here states as explanation to said answers 26 and 27, to wit:

I saw the diseño and petition together when I testified before the land commission; and now, when I testified in this deposition. the diseño alone was presented to me without the petition; but seeing the two together *now*, as I formerly saw them, my memory is that it is the same.

Questions by U. S. att'y.

Ques. 37. What do you mean by having seen them together when you testified in the land commission?

Ans. 37. Before the commission they did not present them separately, but in a body, not sewn together, but together.

Ques. 38. Was not the paper and page upon which the petition is written shown to you by counsel for the claimant during the examination in chief this morning?

Ans. 38. Yes; it was.

Ques. 39. How can a sight of the petition, or even the reading of it, enable you to identify this diseño as one which was in your possession in 1840, 1841, or 1842?

Ans. 39. Because I saw them together; I had them together. That enables me to recognise it as the diseño that I had at that time.

Ques. 40. Please state how the fact that you see the petition
149 and diseño, now before you, enables you to indentify this diseño as the very one which was in your custody in the years last above stated—that is, 1841 or 1842.

(Question objected to because the witness has not stated that the fact above alluded to enables him to state that it was the diseño that he had in 1840 or 1841; but he stated that it was the one he had before him when he testified in the land commission.)

Ans. 40. Because I had them always together.

Ques. 41. How many leagues was included in the diseño handed to you by Ortega?

Ans. 41. I don't know.

Deposition closed and read to witness.

JUAN B. ALVARADO.

Subscribed and sworn to before me this 23rd day of July, A. D. 1861.

[SEAL] CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of Juan Bojorques, claimant's witness.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* ELLEN E. WHITE, adm'x. } In land cases.—District court, No. 346.—Land com., No. 558.

Be it remembered that on this 23d day of July, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAl-
150 lister, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Juan

Bojorquez, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

F. A. Sawyer, sworn interpreter.

Present: Wm. H. Sharp and J. J. Williams for the United States; Volley E. Howard for claimant.

Questions in behalf of the claimant.

Ques. 1st. State your name, age, and place of residence.

Ans. 1. Juan Bojorquez; am 40 years of age; I reside in Santa Clara.

Ques. 2. Did you ever reside on what is now known as the rancho de Laguna de San Antonio?

Ans. 2. Yes; I did.

Ques. 3. Who owned the rancho de Laguna de San Antonio?

Ans. 3. My father, Bartolomé Bojorques and his family.

151 Ques. 4. In what year did you go there to reside?

Ans. 4. In 1841.

Ques. 5. At that time who was in possession of the rancho de San Antonio?

Ans. 5. The rancho de Laguna de San Antonio was in the possession of my father and myself, and bordering on that ranch; the rancho of Arroyo de San Antonio was in the possession of Ortega and Miranda.

Ques. 6. At that time who claimed the rancho Arroyo de San Antonio?

(Objected to as irrelevant and incompetent.)

Ans. 6. Don Antonio Ortega.

Ques. 7. Did Miranda occupy for himsef or anyone else?

(Objected to as incompetent.)

Ans. 7. He occupied it for Señor Ortega.

Ques. 8. How do you know that fact?

Ans. 8. Señor Miranda had frequent intercourse with me at my house, and he said that the ranch belonged to Señor Ortega.

Ques. 9. Where did Theodore Miranda reside?

(Objected to as irrelevant.)

Ans. 9. He lived on the rancho of Señor Ortega.

Ques. 10. Did Theodore Miranda ever tell you for whom he occupied the ranch?

152 (Objected to, as assuming the fact that he occupied it for some one; as irrelevant, leading, and incompetent, and hearsay.)

Ans. 10. He said that he occupied it for Señor Ortega, Ortega promising to give him (Miranda) a little piece of land, and to give none to anybody else.

Cross-examination.—Ques. by att'y for U. S.

Ques. 11. When and by whom was the rancho de Laguna de San Antonio granted to your father?

Ans. 11. I petitioned for myself and my father, as the head of the

family, in 1849. The grant was made by Don Pio Pico. It was in 1839 that I petitioned for the grant.

Ques. 12. The last question is repeated to the witness.

(Question objected to, as the grant is in writing.)

Ans. 12. I don't remember when the grant was made—the application for it was made in 1839. I don't recollect the year in which it was made.

Ques. 13. How long after your petition was it that the grant was issued?

Ans. 13. I don't know.

153 Ques. 14. Was it as much as a year?

Ans. 14. I don't know.

Ques. 15. Was it as much as one year, two years, or three years?

Ans. 15. I can't recollect. It was three or four years, more or less, that my father had the papers.

Ques. 16. Did you or your father live upon said rancho before it was granted to you?

Ans. 16. Yes. Gen'l Vallejo gave us a paper to enable us to settle there.

Ques. 17. Did Gen'l Vallejo give you this paper before or after you petitioned for the land?

Ans. 17. He gave it to us in 1839, the same year in which I petitioned.

Ques. 18. How long did you and your father live upon said ranch before you obtained the grant?

Ans. 18. I don't know when the concession was made.

Ques. 19. What were the boundaries described in the grant to your father and your petition to the governor?

(Objected to as not responsive to the examination in chief, and as not competent, because the grant is in writing and describes the boundaries.)

154 Ans. 19. The colindantes.

Ques. 20. Who were the colindantes described in your petition and the grant?

(Question objected to as before.)

Ans. 20. Don Antonio Ortega and Juan Martin. That's all.

Ques. 21. Are you certain that Don Antonio Ortega was specified as one of those colandantes?

Ans. 21. Yes; because he was always one of our colindantes.

Ques. 22. When did Juan Miranda tell you he occupied the land for Don Antonio Ortega?

Ans. 22. After we had been there about two years.

Ques. 23. Who was present at the conversation and heard him tell you so?

Ans. 23. In our frequent meetings we talked of it, and on the road to Tomales. I don't know whether anybody was present or not; there might have been, but I don't recollect.

Ques. 24. When did you first see Ortega in possession of the rancho Arroyo de San Antonio?

Ans. 24. When I petitioned in 1839 for the rancho Laguna

155 de San Antonio Ortega had a small house on the Arroyo of San Antonio.

Ques. 25. You have said he was in possession in 1841—how long did he continue in possession after that?

Ans. 25. I don't know; I don't recollect.

Ques. 26. Why do you recollect that he was in possession in 1841?

Ans. 26. Because I lived on my ranch.

Ques. 27. Did you not live there also in 1842, 1843, and 1844?

Ans. 27. I lived there until the coming of the Americans.

Ques. 28. Was Antonio Ortega in the possession and occupation o the rancho Arroyo de San Antonio all that time?

Ans. 28. I think he was.

Deposition closed.

his
JUAN + BOJORQUES.
mark.

Subscribed and sworn to before me this 23d July, A. D. 1861.

[SEAL.] CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

153 *Deposition of John Walker, claimant's witness.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ELLEN E. WHITE, adm'x, &c. } In land cases, dist. court, No. 346.—Land com., No. 558.

Be it remembered that on this 24th day of July, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared John Walker, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp and J. J. Williams for the United States; Volney E. Howard, for claimant.

Question 1st. Your name, age, and place of residence?

Ans. 1. John Walker; I am about 35 years of age; I reside in Sonoma county.

Ques. 2. Were you acquainted with Antonio Ortega; and if so, when did you first become acquainted with him and where?

157 Ans. 2. I am acquainted with him, and first became acquainted with him at the mission of Sonoma, about March or April, 1843.

Ques. 3. Are you acquainted with the rancho Arroyo de San Antonio?

Ans. 3. I am acquainted with it.

Ques. 4. Do you know who claimed that ranch in 1843?

(Objected to as irrelevant.)

Ans. 4. Antonio Ortega.

Ques. 5. How do you know that he claimed the ranch? and state all that you know in relation to it.

(Objected to as irrelevant and incompetent.)

Ans. 5. He said to me that he owned the ranch of San Antonio, the estero where Petaluma now is, and told me the boundaries of the ranch.

Ques. 6. Do you know of any acts of ownership which he exercised over it?

Ans. 6. I know of his going there and bringing stock away from the ranch; I saw him driving the stock, and he said he had taken them from the ranch for the purpose of driving them to Oregon.

Ques. 7. Do you know who was generally reputed in the neighborhood to be the owner of that ranch?

(Ques. objected to as irrelevant and incompetent.)

158 Ans. 7. Ortega was generally reputed to be the owner of the ranch. I never heard of any other person claiming it at that time, (1843.)

Ques. 8. Do you know anything of Ortega's going to Oregon? and if so, when?

Ans. 8. He went to Oregon in 1843. He left here about the first of May.

Ques. 9. Who went with him?

Ans. 9. There was a company that drove stock through to that country; there were some 30 or 40 persons in the company; I was with them; my father, Joel P. Walker, was one; Jacob P. Leese was one.

Ques. 10. What do you know of the intentions and efforts of Ortega to return to California?

Ans. 10. I often heard him say that he intended returning to his rancho of San Antonio and to his family.

Cross-examination.—Questions by U. S. att'y.

Ques. 11. When did you first come to this country?

Ans. 11. In 1841.

Ques. 12. Where did you reside from that time until you went to Oregon in May, 1843?

159 Ans. 12. I resided in Napa valley, Sacramento valley, and mission of Sonoma; part of the time in one and part of the time in another.

Ques. 13. When did you first know the rancho Arroyo de San Antonio?

Ans. 13. I never became thoroughly acquainted with that country until 1852 or 1853, I am not certain which.

Ques. 14. When were you first on this ranch?

Ans. 14. I think I was on it in 1849. I don't know the boundaries of the ranch well enough to state positively.

Ques. 15. When were you first in the immediate neighborhood of the ranch?

Ans. 15. In the spring of 1843.

Ques. 16. When next?

Ans. 16. Not until 1849.

Ques. 17. How long were you in the neighborhood of the ranch in the spring of 1843?

Ans. 17. I do not remember. About a month, as well as I remember.

Ques. 18. Where were you staying during that month?

160 Ans. 18. At the mission of Sonoma.

Ques. 16 b. How far is that from the rancho Arroyo de San Antonio?

Ans. 16 b. I do not know; some 10 or 12 miles.

Ques. 17 b. Who was living upon the rancho Arroyo de San Antonio at that time?

Ans. 17 b. I don't remember; a man by the name of Bojorques.

Ques. 18 b. Was Borjorques living on the ranch which you said was claimed by Antonio Ortega?

Ans. 18 b. No. Bojorques claimed to own a ranch of his own.

Ques. 19. Who was living upon the rancho in the spring of 1843, which you say was claimed by Ortega at that time?

Ans. 19. I understood you to say in ques. 17 b. the rancho Laguna de San Antonio, to which I replied Bojorques. On the rancho Arroyo de San Antonio, Juan Miranda was living at that time.

Ques. 20. Who were present at the conversation which you say you had with Antonio Ortega in regard to this ranch in the spring

161 of 1843.

Ans. 20. I do not remember who was present.

Direct examination resumed.

Ques. 21. Do you know where Ortega left his family in 1843 when he went to Oregon?

Ans. 21. He left them on his ranch, as he told me.

(Answer objected to as being mere hearsay.)

Cross examination resumed.

Ques. 22. Who said, in your hearing, in the spring of 1843, that Antonio Ortega was the owner of the rancho Arroyo de San Antonio?

Ans. 22. He did. I don't remember hearing any one else say so. It was so considered in Sonoma, where he would speak of it in the presence of others as his ranch. I never heard it denied or contradicted that it was his ranch.

Ques. 23. Who were the others in whose presence you heard him speak of it?

Ans. 23. In presence of Jacob P. Leese, for one, and I don't remember now who were the others; this was in 1843. I think he was probably the only American in whose presence I heard him speak of it; there were several Spaniards around.

162 Witness wishes to state that by question 16 b he understood the Laguna de San Antonio; from the mission to the nearest point of the rancho of Arroyo de San Antonio is 7 or 8 miles, a straight line.

JOHN WALKER.

Subscribed and sworn to before me, this 24th of July, A. D. 1861,
CUTLER McALLISTER,
U. S. Comm'r.

[SEAL.]

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of J. B. A. Brouillet, claimant's witness.

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ELLEN E WHITE, adm'x, &c. } In land cases, dist. court, No. 346.—Land com., No. 558.

Be it remembered that on this 24th day of July, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant

163 to the acts of Congress in that behalf, personally appeared J. B. A. Brouillet, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp and J. J. Williams, for the United States; Volney E. Howard, for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, and place of residence?

Ans. 1. J. B. A. Brouillet; am over 21 years of age; I reside in Vancouver, Clark county, Washington Territory.

Ques. 2. Are you acquainted with Don Antonio Ortega?

Ans. 2. I am acquainted with him. I first became acquainted with him in the spring of 1849 at Sonoma.

Ques. 3. Are you acquainted with the rancho Arroyo de San Antonio, Sonoma? Please state how you became acquainted with it.

Ans. 3. I am acquainted with it. Early in the summer (May, I think,) of 1849, Don Antonio Ortega deeded the rancho to me

164 and about the same time, accompanied by Don Antonio Ortega, I visited the ranch, and when there, in the presence of two witnesses, he put me in possession of the said ranch.

Ques. 4. State who the witnesses were.

(Objected to as irrelevant.)

Ans. 4. The witnesses were James Miller and Theodore Miranda.

Ques. 5. State how the possession was given, and what occurred on that occasion.

(Objected to as irrelevant and incompetent.)

Ans. 5. Don Antonio Ortega, Mr. Miller, and I went first to the house where Miranda was living, and there Ortega told him that he had sold me the lands and wanted him to accompany us to visit the ranch and to witness the possession, and from there we went and visited the ranch part of the day, and at some place on the ranch, I do not recollect where, Ortega delivered me the papers which he said were the original papers of the ranch.

Ques. 6. Did Theodore Miranda make any objection to the sale of the ranch by Ortega, or claim any part of the land?

(Objected to as irrelevant.)

Ans. 6. None whatever.

165 Ques. 7. Look at the papers now shown you, consisting of the original papers and map from the surveyor general's office, and say if you ever saw them before?

(Objected to as irrelevant.)

Ans. 7. They are the very ones that Ortega gave me on the rancho. When he gave me possession he gave them to me as the original title papers.

Ques. 8. Look at the deed now shown you, marked Antonio Ortega, to J. B. A. Brouillet, and as C. P. L., exhibit to the deposition of José de la Rosa, and say if the same is the one you received as the conveyance of the ranch?

Ans. 8 It is the same.

Ques. 9. When was it delivered to you?

Ans. 9. I am not certain, but I think that he delivered it to me the same day that I gave him my obligation.

Ques. 10. Look at the paper now shown you, marked Exhibit Brouillet No. 1, and say if it is the obligation to which you refer?

Ans. 10. It is. The signature attached to said paper is my signature; the obligation is written in my handwriting; I delivered the obligation the day that it bears date.

Ques. 11. Were you acquainted with the rev. John Nobili, late president of the Catholic college of Santa Clara?

166 Ans. 11. I was.

Ques. 12. Were you acquainted with his signature?

Ans. 12 I was. His signature on the exhibit is his genuine signature. He is dead. I have seen him write.

(The writing over the signature of "F. John Nobili, president, &c," objected to as evidence in this case, as being irrelevant and incompetent.)

Ques. 13. What was the consideration given by you to Ortega for the conveyance of the rancho of San Antonio?

Ans. 13. The consideration was the promise expressed in the obligation, which was the education of his three children.

Ques. 14. Please state whether the consideration in said obligation has been complied with.

Ans. 14. As the obligation, as well as the property, passed out of my hands, and having been out of the country ever since 1850, I have no occasion of knowing, of my own knowledge, whether the children have been educated or not.

Ques. 15. Did you take any steps in 1849 to investigate as to the genuineness of the title papers delivered to you by Ortega? and, if so, state what they were.

(Question objected to as irrelevant and incompetent.)

167 Ans. 15. Before I gave my obligation I asked the opinion of General Vallejo on the title to the ranch; the answer was that it was all right, that in his mind the title to the ranch was all sure. In the fall of the same year, about October, I went with the original title papers to Governor Alvarado, and showed them to him, and asked his opinion upon them. His answer was that the papers were genuine and good, and were complete as far as they went; that there was nothing wanting to them but the approval of the departmental assembly, and that, in his opinion, this would not be regarded as necessary by the United States government.

(Above answer objected to as incompetent, secondary, and hearsay.)

Ques. 16. What papers did you show Governor Alvarado at that time?

Ans. 16. The espediente now shown me and the map.

Cross-examination.—Ques. by att'y for U. S.

Ques. 17. Does the obligation to which you have referred express the true consideration of the deed from Ortega to you?

Ans. 17. It does.

168 Ques. 18. Does the deed from you to Charles White express the true consideration?

(Question objected to, as it assumes a conveyance.)

Ans. 18. I don't recollect. I would like to see the deed.

Ques. 19. Look at the original deed now handed to you, and answer the above question.

Ans. 19. It is what I considered at the time of the deed the true consideration, and I suppose it is. This transaction having been managed on my behalf by an agent, I signed the deed after the whole transaction was completed.

Ques. 20. When was said deed signed by you, and when delivered?

Ans. 20. It was signed by me the day it bears date, 19th Jan'y, 1853.

Ques. 21. In whose custody has the obligation referred to by you been?

Ans. 21. In the custody of the jesuit fathers, at Santa Clara.

Ques. 22. How do you identify the diseño shown you this morning with the one delivered to you by Ortega, in 1849?

169 Ans. 22. By memory; seeing them together, especially seeing the map.

Ques. 23. Is there any mark upon it that you could distinguish it from a copy?

Ans. 23. No particular mark.

Ques. 24. Look at the diseño now shown you, produced by Mr. Hopkins from the archives, and say how you distinguish it from the one heretofore shown you, and which you have testified as the one given to you by Ortega in 1849?

(Question objected to because the question presupposes a comparison, and the counsel for the U. S. retains the original, already in evidence, and refuses to let the witness see it for the purpose of comparison.)

Ans. 24. The appearance of it strikes me as different from what was the appearance of the one that was delivered me on the rancho, and besides, when the map was delivered to me, it was folded in the espediente, and seemed to have been folded in that way for a long time. This one now shown me, with this espediente, I find that they cannot agree in the folds; the folds of the map are not as much marked as they were in the one delivered to me.

Ques. 25. Do you observe any other differences?

Ans. 25. The one that was given me on the ranch looked to me as having been used more than this one; I could not state any other difference.

Ques. 26. Was the one handed to you on the ranch in 1849
170 as much worn as the one which you have identified as that one appears now to be?

Ans. 26. I do not remark much difference.

Ques. 27. Was it a single sheet, or had it the envelope which is now on it, or one similar?

Ans. 27. I do not recollect.

(Witness wishes to explain his answer to ques. 21, and states that he understood that question to be, upon whom devolved the duty of carrying out that obligation; now, understanding the question, in answer to the same states that he delivered the obligation to Ortega, and does not know what he did with it.)

(It is admitted that the diseño referred to in ques. 24 is the original diseño from the espediente of Juan Miranda, produced here by Mr. Hopkins, keeper of the archives, which espediente is on file in said archives.)

J. B. A. BROUILLET.

Subscribed and sworn to before me this 24th July, A. D. 1851.

CUTLER McALLISTER,
[SEAL.] *U. S. Com'r.*

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit Brouillet, No. 1, *attached to dep. of J. B. A. Brouillet, claimant's witness.*

This indenture, made and concluded this first day of May, A. D. 1849, between John the Baptist Abraham Brouillet, on one part, and Antonio Ortega, of the other, witnesseth that the said John Baptist Abraham Brouillet, in consideration of a donation of land, made to him for the purpose of sustaining a college and a convent in this
171 country, (this land consisting in one rancho, situated in the district of Sonoma, in Upper California, this rancho bearing the name of Arroyo de San Antonio, and being bounded at the south by the rancho of Camilo, at the north by the Oak de la Miseria, at the east by the Estero de Petaluma, and at the west by the Laguna de San Antonio, one league square being reserved out of that rancho to said Antonio Ortega,) does the said John Baptista Abraham Brouillet bind himself and his successors to give on to the three actual children of the said Antonio Ortega, (they being two sons and one daughter,) a free and gratuitous collegial education in the first Catholic institutions established in the country; the above obligation to be binding, so far as the said John Baptist Abraham Brouillet be not disturbed in his right to the above-mentioned donation.

J. B. A. BROUILLET.

Witnesses:
WM. H. HENRIE.
JOSE DE LA ROSA.

NOTE.—The words "and a convent" interlined before acknowledgement was taken.

L. W. BOGGS, *Alcalde.*

TERRITORY OF CALIFORNIA,
District of Sonoma:

Personally appeared before me, the undersigned, alcalde of said district, J. B. A. Brouillet, who is known to me to be the person whose name is subscribed to the foregoing instrument of writing as having executed the same, and acknowledged the same to be his act and deed for the purposes therein mentioned.

Given under my hand at office in Sonoma, the first day of May, A. D. 1849.

L. W. BOGGS.

172 By these presents I obligate myself to receive the within obligation, and to receive the children therein named, and to carry out the obligation of rev'd J. B. A. Brouillet.

Santa Clara, Nov'r 24th, 1852.

F. JOHN NOBILI,
President of the Cath. College of Santa Clara.
LEONIDIO DUQUE Y ORTEGA.

Witnesses:
JOSE PEÑA.
ANT'O PEÑA.

Endorsed: Filed for record 1st May, 1849.

L. W. BOGGS.

Recorded in Book C, in pages 200, 201.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of William Blanding, cl'm't's witness.

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ELLEN E. WHITE, adm'x, &c. } In land cases, dist. court, No. 346.—Land com., No. 558.

Be it remembered that on this 7th day of Aug., A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared William Blanding, a witness produced in behalf of the claimant in the above-entitled
173 cause, now pending in said court under the acts of Congress, to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp, U. S. att'y, by J. J. Williams; Volney E. Howard for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, and place of residence?

Ans. 1. William Blanding; am about 38 years of age; I reside in San F'co, California; I was formerly U. S. dist. att'y for the northern district of California.

Ques. 2. Please state whether in your official capacity you had anything to do with the case of the U. S. *vs.* Ellen E. White, adm'x, &c., No. 346 on the docket of this court.

Ans. 2. I had.

Ques. 3. Please state whether in your official capacity you received any direction from the Att'y Gen'l of the United States in regard to dismissing the appeal in this case.

Ans. 3. My recollection now is that I did; that he directed the appeal to be dismissed.

Ques. 4. Please state the reasons why you did not dismiss said appeal.

Ans. 4. After so long a time the facts have somewhat passed from my recollection; but upon referring to a letter which is now
174 shown me, addressed by me to Volney E. Howard, attorney of the claimants, dated October 28th, 1858, after I had gone out of office, the facts which induced me not to dismiss the appeal, as

directed by the Attorney General, are there stated, and I refer to that letter for a further answer to this question. (The above answer and letter is objected to as evidence in this case, as being irrelevant and incompetent testimony, and for the further reason that no foundation has been laid for the introduction of a copy of said letter.)

Ques. 5. Do you recognize the copy now shown you as a correct copy of the original?

Ans. 5. Yes; I have no doubt it is. (Objected to for the reasons last above assigned.)

Ques. 6. Can you state independent of the letter, from recollection, any reasons which operated upon you to refuse to dismiss the appeal in said case?

Ans. 6. The dismissal of the appeal was withheld in consequence of certain facts being brought to my attention by Mr. J. J. Williams, who was assisting the United States in resisting the claim. My recollection is, the reason which controlled my conduct was, that certain depositions taken before the land commission had been omitted in the transcript sent to this court from the land commission, which seemed to me would change the aspect of the case on the trial in the district court. As these depositions were, I concluded, also omitted from the transcript sent on to the Att'y Gen'l's office, I was led to
175 believe that the Att'y Gen'l had dismissed the appeal without a full knowledge of the case; hence I disobeyed his order.

The depositions referred to by me in this answer are the same that are stated by me in the letter above referred to from me to Gen'l Howard, a copy of which said letter is hereto annexed, marked "Exhibit Blanding No. 1," being Teodora and Francisca Miranda. (Objected to for the reasons last above assigned.)

Ques. 7. How did you receive the impression that these depositions were improperly omitted from the record?

Ans. 7. Copies were brought to me from the surveyor general's office by Mr. Williams, endorsed in such a way as to lead me to believe that they had been omitted from the transcript.

Ques. 8. Do you recollect about the time you received the letter of the Att'y Gen'l dismissing the appeal in this case?

Ans. 8. I don't recollect when it was received; I have no means of ascertaining.

Ques. 9. When does the original letter from the Att'y Gen'l to you bear date, and when would it reach California in due course of mail, if mailed at the time it bears date?

Ans. 9. It bears date the 7th Feb'y, 1857. The post-mark on the envelope is Feb'y, 1857; the day of the month is too indistinct to be made out. It would have been received here about the 15th
176 March in due course of mail.

Ques. 10. Look at the copy of said letter herewith filed and marked "Exhibit Blanding No. 2," and state whether it is a copy of said original on file in the office of the U. S. att'y dis't att'y.

Ans. 10. The copy and original are in the same handwriting; the copy is an exact copy of the original.

Cross examination.—Ques. by U. S. Att'y.

Ques. 11. At the date of the letter marked "Exhibit Blanding No. 1," were you then dis't att'y, and if not, how long before had you ceased to hold that office?

Ans. 11. I was not district att'y at that time; I had been out of office about 14 months.

Ques. 12. When called upon to dismiss this case under the instructions of the Att'y Gen'l, had not much evidence been taken in this court in regard to the validity of the Ortega grant?

(Ques. objected to because the depositions bear the dates upon which they were taken)

Ans. 12. I have no recollection upon this point.

Ques. 13. Were you not informed that the reasons that the depositions of Teodoro Miranda and Francisca Miranda de Ortega were omitted from the record was because they had been irregularly taken? (Question objected to as not showing the source of
177 information nor the time.)

Ans. 13. I have very little recollection now of the matter apart from the letter which I have referred to.

Ques. 14. At the time that you refused to dismiss the said appeal, was not various depositions of witnesses taken in this court shown to you, and also a certified copy of an espediente from the archives based upon the petition of Juan Miranda for this same land, containing orders and informes tending to show that the land was vacant and public land about 4 years after the date of the grant filed in this case?

(Question objected to as not responsive to the examination in chief, as argumentative and assuming facts not in proof.)

Ans. 14. My recollection of the facts is too faint to enable me to answer the question. This much I do remember in general, that there was an espediente in the archives showing that Juan Miranda had some claim for this very land; that knowledge I could not have arrived at, I think, except by a certified copy of the Miranda espediente having been shown me by Mr. Williams. I certainly should not have looked for such a thing in the archives unless it had been brought to my attention by him.

Ques. 16. Did you not in other cases, for reasons satisfactory to your judgment, decline to enter dismissals in accordance with similar instructions?

Ans. 16. Yes, in several other cases.

178 Ques. 17. Was not this practice called to the attention of the district court, and did it not, notwithstanding such instructions, take jurisdiction of the cases, holding that the dismissals were matters in your discretion?

Ans. 17. Yes, such was the fact.

Ques. 18. Was it not your habit in such cases to report your action to the Attorney General at Washington?

Ans. 18. It was. And in no case that I remember of did he disapprove such action.

Direct examination resumed.

Ques. 19. Was Mr. Williams employed by the government at the time he assisted you in this case? if not, by whom was he employed?

Ans. 19. I have no idea who employed Mr. Williams, I know he was not employed by the government; he acted with the government with my concurrrence.

WM. BLANDING.

Subscribed and sworn to before me this 7th day of August, A. D. 1861.

[SEAL.] CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

179 *Exhibit Blanding No. 1, attached to dep. of Wm. Blanding, cl'm't's witness.*

SAN FRANCISCO, *Oct.* 28, 1858.

DEAR SIR: I have been requested by the claimants in the land claim of Ellen E. White, administratrix, No. 558 in land commission, and No. 346 in the district court, to state the facts which led to my declining, while U. S. dist. att'y, to dismiss the appeal in this case, as was directed by Mr. Cushing, the late Att'y General.

It was my invariable custom to obey the Att'y General in such cases unless facts not appearing in the transcript were brought to my attention which led to the conclusion that the case should be further investigated. In this case the settlers on the land had employed counsel to resist the claim in the dist. court on appeal.

When the direction to dismiss the appeal became known, their counsel laid before me, as a reason why the appeal should not be dismissed, certified copies from the U. S. surveyor general's office, where the original archives of the land commission are kept, of certain depositions of Teodora Miranda and Francisca Miranda, which purported to have been taken in the case in the land commission, but were not contained in the transcript filed in the district court; I was led to believe that such portion of the evidence had, by accident or design, been omitted.

These depositions were unfavorable to the claim, and seemed
180 to me very important to the government.

This consideration, coupled with the fact that another claim for the same tract had been presented to the board of land commission, and for some reason had been abandoned, induced me to withold the dismissal with the view of having the wanting depositions supplied, and other testimony introduced.

Upon subsequent examination the fact seemed to be that the reason for the omission of the depositions was that they were not regularly taken, and therefore formed properly no part of the record of the case, and hence were not inserted in the transcript.

At the hearing in the district court the claim was confirmed, and

under the circumstances, had I been in office at the time of the confirmation, I should have dismissed the appeal, as the Att'y General had directed.

Very respectfully, y'rs,
(Signed) WM. BLANDING,
late Dist. Att'y.

VOLNEY E. HOWARD, Esq.,
Att'y for claimants.

Endorsed: Filed Nov. 19, 1861.
W. H. CHEVERS, *Clerk.*

Exhibit Blanding No. 2, attached to dep. of Wm. Blanding, cl'm't's witness.

CALIFORNIA LAND CLAIMS,
Attorney General's Office, 7 Feb'ry, 1857.

SIR: In the case of the claim of Ellen White, adm'x, confirmed to the claimant by the commissioners, case No. five hundred and fifty-eight, (558,) appeal will not be prosecuted by the United States.

181 I am, respectfully,
(Signed) C. CUSHING.

WM. BLANDING, Esq.,
U. S. Attorney, San Francisco.

Endorsed: Filed Nov. 19, 1861.
W. H. CHEVERS, *Clerk.*

Deposition of Moses Arms, claimant's witness.

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ELLEN E. WHITE, adm'x, &c. } In land cases, dist. court, No. 346.—Land com, No. 558.

Be it remembered, that on this 7th day of August, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California, to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Moses Arms, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp, U. S. att'y, by J. J. Williams; Volney E. Howard for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, and place of residence?

182 Ans. 1. Moses Arms; I am 40 years of age; I now reside

in San Francisco; prior to 1st of last April I had been a resident of Petaluma for 8 years.

Ques. 2. Are you acquainted with the rancho Arroyo de San Antonio, lying in Sonoma county?

Ans. 2. I am considerably acquainted with it.

Ques. 3. What office, if any, did you hold in the county of Sonoma?

Ans. 3. I have been city assessor for 1858 and 1860. In 1858 I was also deputy county assessor. I was also appointed by the board of school commissioners school assessor for 1860.

Ques. 4. To whom, and under what title has the rancho Arroyo de San Antonio been assessed for taxes?

Ans. 4. I assessed it to parties claiming it under the Ortega title.

Ques. 5. Has it ever, to your knowledge, been assessed to the claimants of any other Mexican title.

Ans. 5. It never has to my knowledge.

Ques. 6. State the value of the land and improvements, assessed to parties in possession, owning under the Ortega title, by purchase from the present claimants of said title.

Ans. 6. In making the assessment, it was necessary to dis-
183 tinguish between those persons in possession who held under said title and those merely who held their land by a possessory title; because to those who possessed the full title I assessed the land and improvements for their full value; to those who held merely a possessory, I assessed them to the amount that I thought their title was worth, also assessing the claimants of the Ortega title for the same land to the amount that I thought their title was worth. I make this explanation as enabling me to answer the question fully. The amount of said assessment to lands in possession of parties, held under the Ortega title, who had purchased from Mr. Stuart, is about $100,000. I mean those who have bought the Ortega title to said land, whether it belongs to Mr. Stuart, or any body else.

Ques. 7. Can you state the value of the improvements belonging to parties in possession holding under the Ortega title?

Ans. 7. About $200,000.

Ques. 8. Are you able to state about how many persons there are holding under the Ortega title on the ranch as purchasers?

Ans. 8. I think about two hundred.

Ques. 9. Can you state the amount of taxes paid by present claim-
ant, Stuart, for the last three years?

184 Ans. 9. In 1858, about $1,500. In 1859, about $2,000. In 1860, about $1,200. These are the taxes that would accrue from the assessments. He has paid these taxes for the last three years, to the best of my knowledge, and I have seen the receipts.

(Before proceeding to cross-examination, the whole of the foregoing deposition is objected to, as being irrelevant, and also as being incompetent.)

Cross-examination—Ques. by U. S. Att'y.

Ques. 10. Is not the town of Petaluma on this ranch?

Ans. 10. It is. I so understand it.

Ques. 11. What is the number of inhabitants in said town?

Ans. 12. About 1,200, I think. It has been more than that.

Ques. 13. How many persons reside on this ranch outside of the limits of the town of Petaluma.

Ans. 13. I could not state with any degree of certainty. It is tolerably thickly settled for this country.

185 Ques. 14. What is the market value of all the lots and improvements thereon in the town of Petaluma?

Ans. 14. I think the assessed value for the year 1860 was to all parties about $400,000. We usually try to assess property at the cash value, what it would bring at forced sale under the hammer.

Direct examination resumed.

Ques. 15. Under what title is the most valuable portion of Petaluma held by parties in possession?

(Objected to as irrelevant.)

Ans. 15. If I understand the question, I would say the most valuable part was held under the Ortega grant. I speak not of quantity, but of the value.

Cross-examination resumed.

Ques. 16. Have not many of the parties holding this valuable property purchased the Ortega claim for the purpose of quieting the title and prior possession?

(Question objected to because the witness cannot know the motives of the purchasers.)

186 Ans. 16. I think most of them purchased because they thought they were getting a good title from Mr. Stuart.

Ques. 17. Were not many of the valuable improvements to which you have referred erected before they purchased the Ortega title?

Ans. 17. They were.

Direct examination re-resumed.

Ques. 18. Were the most valuable improvements in Petaluma erected before or after the parties in possession purchased the Ortega title?

(Objected to as irrelevant.)

Ans. 18. The most valuable were erected after the purchase of the Ortega title. I allude more particularly to some of the most valuable buildings; McCune's building, for instance. People have been more free to build good buildings since they have bought the title of Mr. Stuart, believing that they had got all the titles. I mean to say a full title.

So far as I understand the feelings of the people, they have confidence in the Ortega title and no other grant.

187 Deposition closed.

MOSES ARMS.

Subscribed and sworn to before me this 7th day of August, A. D. 1861.

[SEAL.] CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Admission by United States Att'y.

District court of the United States for the northern district of California.

THE UNITED STATES
vs.
ELLEN E. WHITE, adm'x. } No. 346.

It is admitted that the deed from Antonio Ortega to John the Baptist Abraham Brouillet, dated the 1st day of March, 1849, which has been given in evidence in this case, was acknowledged on the 1st day of May, 1849, by said Ortega before L. W. Boggs, alcalde of the district of Sonoma, and was filed for record and recorded in said alcalde's office on the same day, as appears from endorsements on said original deed.

San Francisco, October 29th, 1861.

W. H. SHARP, *U. S. Att'y.*

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

188 *Dep. of R. C. Hopkins.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
ELLEN E. WHITE, adm'x, &c. } In land cases, dist. court, No. 346.—Land com., No. 558.

Be it remembered that on this 8th day of August, A. D 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp, U. S. att'y, by J. J. Williams; Volney E. Howard for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, place of residence, and occupation?

Ans. 1. R. C. Hopkins; am over 21 years of age; I reside in San Francisco; I am keeper of the archives of the office of the surveyor general of the United States for California. I have been in said office since 1855.

189 Ques. 2. Look at the original espediente in this case, marked "Document H. H. No. 1, annexed to the deposition of L. A. D. de Ortega, taken before Com'r Hiland Hall, filed in office March 25th, 1853, Geo. Fisher, Sec'y," and state how Alvarado signs his name in the marginal order and decree of concession.

Ans. 2. He signs it "Alvarado," with a rubric.

Ques. 3. Have you examined the espedientes in the archives for the year 1840, sufficient to state how Alvarado signed his name in that year to marginal decrees of reference and concessions?

Ans. 3. He signs his name "Alvarado," with a rubric.

Ques. 4. Have you examined the signatures of Alvarado which are to be found in the papers of the late U. S. land commission and other portions of the archives, sufficiently to enable you to state how Alvarado signed his name since the year 1846?

Ans. 4. I have examined the depositions of Governor Alvarado on file among the papers of the late board of land commissioners; to these depositions, of which there are about 50, Governor Alvarado in all of them signs his full name, Juan B. Alvarado.

Ques. 5. Is there any book of registry or toma de razon for the year 1840 on file among the papers in the office of the U. S. surveyor general for California.

190 Ans. 5. There is not. I do not know what has become of it. I suppose that there must have been a record which has been lost or destroyed.

Ques. 6. Under the usage and custom of the Mexican government, as it appears from the archives, what were the different methods of signing or authenticating petitions, orders of reference, decrees of concession and other papers connected with the granting of public lands?

(Objected to because, with the exception of petitions, the manner of signing and authenticating said documents is a matter of law and prescribed in the act of the Mexican Congress of 1837.)

Ans. 6. It appears from the archives that there were three methods of making signatures: first, the full name with the rubrica, second, the last name with the rubrica, and third, the rubrica alone.

Ques. 7. How is the petition in this case signed?

Ans. 7. It is signed Antonio Ortega, with a rubric.

Ques. 8. Have you observed Ortega's signatures in other cases; and if yea, how is it written?

Ans. 8. I have observed his name in several other cases. In expediente No. 165 his signature occurs once. The written part of his name appears to be different from his signature in the espedi-

191 ente in this case. The rubrica in that expediente bears some resemblance to the rubrica in the petition; in this case it is, however, not precisely alike. (Espediente No. 165 is now attached

to this deposition, marked Exhibit Hopkins, A; also a translation of said espediente, marked Exhibit Hopkins, B.)

(Above answer and exhibits objected to as being irrelevant.)

Ques. 9. Does not the archives show that the petition for provisional grants were written upon paper found at the place where the petitions were dated, and if there were no stamped or habilitated paper there, were they not written upon common paper, as in this case?

Ans. 9. I suppose that petitions were written upon paper found at the place at which the petition was dated. If the provisional grant were upon the same sheet of paper, as a matter of course it was upon a sheet of paper found at the place where the petition was dated; if there was no stamped paper at the place where the petition was dated, it was written upon common paper, and the fact stated.

Ques. 10. What was the usage and custom of the Mexican government, as appears from the archives, in using unsealed paper where there was no stamped paper?

(Obj'ted to because the practice in such circumstances was fixed by law.)

Ans. 10. If a petition was made upon unsealed paper, it was
192 usual for the petitioner to state that there was no stamped paper in the place. When a grant was made out on common or unsealed paper, it was usual to require the grantee to take out his grant upon the proper sealed paper when the same could be obtained.

Ques. 11. Were not the papers and grants on unsealed paper, under the circumstances to which you have referred, treated as valid by the uniform practice of the Mexican officers.

(Objected to as a matter of law)

Ans. 11. I think they were.

Ques. 12. Have you examined the archives to ascertain whether there was any sealed paper at Sonoma for the years 1837, '38, '39, '40, '41, and '42; if yea, with what result?

(Objected to as irrelevant.)

Ans. 12. The espedientes on file in the archives show that there was no stamped paper used in Sonoma in the years above referred to, but that common paper was used. There was one espediente for the year 1840 in which the petition was made in Sonoma.

Ques. 13. Are the petition, order of reference, report and concession in this case written upon more than one sheet of paper?

Ans. 13. They are all written upon one sheet of paper.

193 Ques. 14. Examine what purports to be a translation of an espediente, in the case of a grant to Juan Padilla, filed in this case March 16th, 1857, and say whether the same is a full copy of the original translation found in the surveyor general's office?

Ans. 14. It does not contain all of the documents found in the translation of said espediente, on file among the papers of the land commission.

Ques. 15 Please examine the document now shown you, annexed to your deposition, marked Exhibit Hopkins, C, and state whether it is a full copy of the original translation on file in the surveyor general's office?

Ans. 15. It is a certified copy of the document entitled "Proceedings at the instance of Don Juan Nepomuceno Padilla," who petitions for the parcel of land called "Roblar de la Miseria."

Ques. 16. Please examine what purports to be a translation of "Espediente Juan Miranda, petitioning for place called Arroyo de San Antonio, filed March 12, 1857, W. H. Chevers, clerk," filed in this case, and state whether it is a true, full and correct translation of said espediente?

Ans. 16. It does not contain but one copy of the grant, and there is a mistake in the translation of the habilitacion, which should
194 be eight dollars instead of one dollar.

Ques. 17. Please examine the document now shown you marked "Exhibit Hopkins, D," and state if it is a full translation of said documents, and if the correction is made in the mistake of the habilitacion, of from one dollar to eight dollars?

Ans. 17. Exhibit Hopkins, D, is a full translation of the original espediente, and the mistake referred to in the last answer has been corrected in this deposition.

Ques. 18. Have you examined the archives to ascertain whether or not the departmental assembly of California were in session during the last of the year 1840; and if so, with what result?

Ans. 18. The archives do not show that the departmental assembly was in session during the last part of the year 1840.

Ques. 19. When did they adjourn last in that year?

Ans. 19. The departmental assembly seems to have adjourned on the 30th May, 1840, for the last time in that year.

Ques. 20. Please examine the document now shown you, marked "Exhibit Hopkins, E," and state if it is a correct translation made by you of certain original letters found on file in the surveyor general's office, in reference to the meeting of the departmental assembly?

195 Ans. 20 It is.

Ques. 21. Have you examined the archives to ascertain when the departmental assembly first met after their adjournment in May, 1840, for the purpose of confirming land grants?

Ans. 21. The archives show no journals of the departmental assembly when any grants were approved from 1840 to 1845.

Ques. 22. Have you made an examination of the espedientes referred to in the Jimeno index, and a comparison of the same with said index; if so, what is the accuracy of said index in your comparison of the same with said espedientes?

Ans. 22 I have made a comparison of the espedientes referred to on the Jimeno index with said index; I find the Jimeno index generally correct; however, I find some espedientes referred to upon the Jimeno index as "*Concedido*" (granted) when the espedientes themselves show that the grant was refused; and *vice versa*, that is, there are some where the index shows that they were "*negado*" (denied) when the espedientes show that the grant was made The espedientes referred to are noted in this paper now produced by me, annexed to my deposition, marked "Exhibit Hopkins, F." There are also espedientes entered upon the Jimeno index as "*conceded*" when the espediente showed no concession or grant.

196 Ques. 23. What is the condition of the index in regard to the registry or mentioning of the imperfect grants?

Ans. 23. There is a class of unfinished or incomplete espedientes

on file in the archives; these are not referred to in the Jimeno index; there are, however, upon the Jimeno index some provisional grants. The imperfect espedientes referred to are such as have never reached final grant or rejection.

Ques. 24. In 1844, upon what paper as to sealed paper was the original title written upon in the secretary's office, which was usually signed and delivered to the party?

Ans. 24. Generally upon $8 stamped paper; it was regulated by law.

Ques. 25. Have you with you the original espedientê, No. 397, a copy of which is filed in this case; if so, please state of what said espediente consists?

Ans. 25. It consists of the petition of Juan Miranda, the certificate of Jacob P. Leese, the order of reference by the governor, the report of the secretary of state, the order by the governor for the title to issue, one unsigned copy of the grant on eight dollar stamped paper, an unsigned copy on unstamped or common paper, an unsigned decree of concession, and a map.

Ques. 26. Is the certificate of Jacob P. Leese in this espediente in the usual form of other certificates on file in the archives?

197 Ans. 26. He certifies that the land does not belong to any pueblo or corporation; it was customary to report, in compliance with the order of the governor, whether or not the land belonged to any individual, pueblo, or corporation.

Ques. 27. Have these formal grants, or either of them, any note of toma de razon upon them which would indicate that they had been recorded in the book of records kept for that purpose?

Ans. 27. They have not.

Ques. 28. Have you in your possession, as keeper of the archives, a book of records, or toma de razon, of land grants for the year 1844, and any other years?

Ans. 28. There is a toma de razon for the year 1844, and one for the years 1844 and 1845.

Ques. 29. Have you examined said books for the purpose of ascertaining whether there was any record of this pretended grant to Juan Miranda or not?

Ans. 29. I have examined them, and there is no such record?

Ques. 30. Have you made an examination of all of the original grants for 1844, filed in the U. S. land commission, to ascertain whether or not they contain a note of "toma de razon" upon them; and if so, with what result?

(Question objected to as irrelevant.)

198 Ans. 30. I have made such examination; they all contain such note, save one to Tomas Blanco.

Ques. 31. Was the one to Tomas Blanco, which you speak of, written in the secretary's office?

Ans. 31. It is in the handwriting of one George Allen, who, I think, was not a clerk in the office of the secretary of state.

Ques. 32. Have you made an examination of the Mexican archives, now in the office of the surveyor general, to ascertain whether there are any other instances, saving this one of Juan Miranda, where there are two unsigned copies of the formal grant attached to any espediente?

Ans. 32. I have examined them, and find no other instance.

Ques. 33. Have you examined said archives, as above, to ascertain whether there is any instance, save in this espediente of Juan Miranda, where the copy of the grant attached to the espediente is written upon eight dollar stamped paper?

Ans. 33. I have found no other instance in the archives.

Ques. 34. Is there more than one formal grant attached to the espedientes found on file in the archives, save in the case of Juan Miranda; if not, upon what kind of paper is said grant written?

199 Ans. 34. The copy of the grant attached to the espediente is written upon common paper.

Ques. 35. Do you find any paper like that upon which the Ortega espediente is written in the archives, without any writing on it?

Ans. 35. I do.

Ques. 36. Have you examined the archives to ascertain whether there was any ruling on any paper in said archives that compared with the ruling on this Ortega espediente; if so, with what result?

Ans. 36. I have not found in the archives any paper the ruling on which corresponds exactly with this.

Ques. 37. Was it not generally the custom, as shown by the archives, for parties to rule their paper only as they wanted to use it?

Ans. 37. I think they geuerally ruled it as they required it for use.

Ques. 38. Does not the archives show that almost all the paper in said archives of Italian make, or of the make of that of the Ortega espediente, not written upon, found unruled?

Ans. 38. The archives do.

Ques. 39. Have you made an examination of the archives to ascertain who, if any one, was the legally appointed administrator

200 of the mission of Sonoma in the year 1835; and if so, with what result?

Ans. 39. The archives show that Antonio Ortega was appointed mayor domo of the mission of Sonoma by Gen'l Vallejo, in the year 1835, and that his appointment was approved by Governor Figueroa, fixing his salary at five hundred dollars a year. A certified copy of his appointment, with a translation made by me, are here annexed to my deposition, marked respectively Exhibit Hopkins, G, and Exhibit Hopkins, H.

(Above answer and exhibits objected to as irrelevant)

(A traced copy of the Miranda espediente on cloth is now filed, because the one heretofore filed, May 7, 1856, is somewhat torn)

Cross-examination.—Ques. by Att'y for U. S.

Ques. 40. Look at the translations of the espediente of J. N. Padilla and of Juan Miranda, both filed in this case in March, 1857, and say in whose handwriting they are, and by whom they were made?

Ans. 40. They were in my handwriting, and were made by me.

Ques. 41. Is not the original of the translation of the espediente of J. N. Padilla annexed to your deposition taken in this case on the 16th day of March, 1857, and is not said original certified as a part only of the espediente in said archives?

20 Ans. 41. It is, it is.

Ques. 42. Do not the grants issued by Alvarado, and delivered to the grantees in 1840, bear Alvarado's full signature?

Ans. 42. The formal grants issued by Juan B. Alvarado, in the year 1840, and every other year, bear his full signature.

Ques. 43 If a grant made prior to 1845 was noted in the "toma de razon," would it not be found also registered in Jimeno's Index?

Ans. 45. A grant made prior to the year 1845, where the espediente was placed in the archives, should be found registered in the Jimeno Index.

Ques. 44. Do you find any depositions of Alvarado, in the archives, made prior to the change of government, by which you could judge of the style in which he was in the habit of signing such papers, whether with his full or half signature?

Ans. 44. I find no depositions, signed by Alvarado, taken prior to the change. I find none save what are taken in the land commission.

R. C. HOPKINS.

Subscribed and sworn to before me this 8th day of August, A. D. 1861.

CUTLER McALLISTER,
U. S. Comm'r.

[SEAL.]

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

202 *Exhibit Hopkins A attached to dep. R. C. Hopkins, cl'm't's witness.*

Jurisdicion de Sonoma.

Expediente promobido en solicitud del paraje conosido con el nombre de Aque Caliente por Ygnacio Pacheco.

165

Sello tercero, dos reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterrey, de la Alta California, para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

ANGEL RAMIREZ.

CASTRO.

SR. GEFE SUP'R POLITICO: Ygnacio Pacheco, cab'o de la comp'a de caball'a perm'te de S. Fran'co ante V. S. como mejor combenga amiderecho digo: que siendo pocedor de conciderable num'o de ganadó bacuno y caballar y careciendo de un terreno propio para asegurar mi subsist'a y la de mi familia, solicito q. V. S. se sirva conceder mi el q. va marcado en el diseño adjunto conocido con el nombre de Agua

Caliente: este terrenocolinda con el pueblo de Sonoma p'r el rancho de este; y por el sur con el de Petaluma y estencion es de una legua cuadrado ó un sitio de ganado mayor por lo espuesto.

A. V. S. suplica se sirva aceder á esta mi solicitud sí lo hallare en justica de lo que receibre gracia; juro no ser de malicia, &c.

Sonoma, 30 de Dic'e de 1835.

YGN'O PACHECO.

203 MONTERREY, *En'o* 22 *de* 1836.

De conformidad con las leyes í reglam'tes de la materia informe el ayuntam'to de S'n Fran'co si el contenido en esta instancia obtiene los requisitos prevenidos en la ley de 28 de Agosto de 1824, p'a ser atendido en su solicitud si el terreno q'l pretende esta comprehendido en las 20 leguas limitrofes ó 10 litorales; si es de regadio temporal ó abrebadero; si pertenese á la propriedad de alguñ particular corporacion ó pueblo; í se es de regadio temporal ó abrebadero, ebacuadas estas diligencias pasara al mayordomo de S'n Fran'co p'a q'e esponge lo q'e crea combeniente el S'r D'n Nicolas Gutierres tent'l coron'l comandante gra'l, ynspector í gefe politico de la Alta California asi lo mando decreto í firmo de q'e doi fee.

NICOLAS GUTIERRES.
F'CO DELL CASTILLO,
Negrete S'rio.

SOR GEFE SUPE'R POLITICO: En cumplim'to de lo prevenido p'r el sup'r decreta f'ha 22 de E'no de presente año q'e se halla en la presedente solicitud q hace el C. Ygnacio Pacheco del terreno de nombrado Agua Caliente; el ayuntam'to de esta demarcasion dice lo siguiente q. el interesado obtiene los requisitos necesarios p'a ser atendido, el terreno que pretendeno esta comprendido en las 20 leguas limitrofes y si en las 10 litorales; es de regadio temporal y poco observadero d'ho parage la ocupara la mision de S. Solano p'ro en la actualidad ignora
este ayuntam'to si estera ocupado p'r aquel pueblo, p'r lo q. es
204 de paracer informe el comisionado ó Mayordomo de Sonoma.
Pueblo de administrasion de San Fran'co de Asis. En'o 22 de 1836.

Con f'ho, 11 del pp'o Marzo me remitio el Sor. alcalde del pueblo de San Francisco estos dos espedientes p'a informe segun el superior decreto que se halla el margen de d'hos esp's y como yo no tengo conosim'to de esos terreno por no perteneser á la de micago y sabedor de q'e pertenesen á esa ex mission de S. Solano, solo V. puede informar aserca de lo espuesto en virtud de ser un a'dor de d'ha.

Dios y libertad. Pueblo de Dolores, 16 de Abril de 1836.

GUM'DO FLORES,
Sor A'dor de San Solano.

El administrador de San Fr'co de Asis con oficio depecha 16 del coriente acompaña los dos espedientes promovidos p'r los ciudadanos Ygn'o Pacheco, y Nicolas Y'guera p'a que informe segun lo pide en su oficio sitado y p'a facilitar el curso de ellos diré q'e los terrenos

q'e solicitar no estan ocupadas ni p'r los naturales de esta puebla ni p'r el fondo, o semovientes q'e estan ami cargo pues aquellas tienen lla sus ranchos establicados en comun y este ocupa desde el paraje de Suscol asta el estrecho de Carqueñas son mescla alguna por su lo Caledad; por respectibo a las personas q'e lo solicitan obtien los requisitos para atendidos y los terrenos no estan comprendidos en las 20 leguas limitrofes ni en las diez literales q'e espresa la ley
207 de 18 de Agosto de 1824 hapesar de que acé lo informa el ylustre ayuntamiente de S. Fr'co de Asis.

Los tres documentos ad fientos dichos tengo el onor de acompañar à vs. p'a los fines combengan.

Dios y liberata. Sonoma, Abril 24 de 1836.

ANTONIO ORTEGA,
Sor gefe superior y politico de la Alta California.

Dros, 12 *ps.*

Sello tercero, dos reales.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterrey de la Alta California para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

CASTRO.
ANGEL RAMIREZ.

S. Fran'co de Assis, Marzo 11 de 1836.

JOSE JOQ'N ESTUDILLO.
FRAN'CO SANCHES, *S'rio.*

(Here follows map marked original, page 205.)

MONTERREI, *Mayo* 7 *de* 1836.

Vista la peticion con que da principir este espediente el informe del y ayuntam^to^ de S. Francisco de Asis, el de los administradores de las misiones de S. Solano á S. Fran'co con todo lo demas q. se tuvo presente i ver convino, de conformidad con lo dispuesto por las leyes i reglamentos de la materia se declara al C. Ygnacio Pacheco, dueño en propriedad del terreno nombrado Agua Caliente sugetandose á las condiciones q. se estipularen, librese el despacho correspondiente, tomese razon de el en el libro respectivo i reverse el espediente para la aprovacion de la E. D'n territorial el S. D. Mariano Chico, gefe superior politico de la Alta California asi lo mando decreto i firmo de lo que certifico.

208

MAR'O CHICO.
CASTILLO NEGRETE,
F'CO DEL, *S'rio.*

En session de 31 de Mayo pasó à la comision de terrenos baldios.

MALDONADO, *S'rio.*

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I. E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican

territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law do hereby certify that the 11 preceding and hereunto annexed pages of tracing paper, numbered from one to 11, inclusive, exhibit a true, full, and correct copy of an original document entitled "Jurisdicion de Sonoma, espediente promovido en solicitud del parge conocido con el nombre de Agua Caliente, por Ygnacio Pacheco, 165," as the same appears among said archives.

In testimony whereof I have hereunto signed my name officially and caused my seal of office to be affixed at the city of San [SEAL] Francisco this 26th day of July, 1861.

E. F. BEALE,
U. S Surveyor General for California.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

209 *Exhibit Hopkins B, attached to dep. R. C. Hopkins, cl'm't's witness.*

Stamp third, two rials.

Provisionally authorised by the administration of the maratime custom-house of Monterey, of Alta California, for the years 1834 and 1835.

(Signed) CASTRO.
(Signed) ANGEL RAMIREZ.

SEÑOR SUPERIOR POLITICAL CHIEF: Nicholas Yguera, settled in this frontier before your excellency in the manner provided by law, represents: That some time ago he has removed the stock which he had in San Francisco on the other side of the port to this pueblo of Sonoma, for the purpose of establishing himself here with his family, and having need of a private land for cultivation and for his future subsistence, and being such that which is marked out in the map adjoining, which comprises one square league in the place of Napa. Wherefore he prays your excellency to be pleased to grant this request with your accustomed benignity, for which he will live entirely grateful.

Sonoma, December 30th, 1835.

(Signed) NICHOLAS YGUERA.

MONTEREY, *January 22nd*, 1836.

In conformity with the laws relating to the matter, the ayuntamiento of San Francisco will report if the petitioner possesses the requisites provided in the laws of Aug. 28, 1824, to entitle his petition to be attended to; if the land asked for belongs to any private person, mission, or pueblo; if it is irrigable, dependant on the seasons and pasture land, and what may be its extent. These examina-

tions being finished, this will be passed to the mayor domo of
210 the ex missions of San Francisco in order that he may report what he may deem convenient.

Señor Don Nicolas Gutierrez, lieut. colonel of cavalry in the permanent army, commandant general, inspector and political chief of Upper California, thus ordered, decreed, and signed, of which I certify.

(Signed) NICOLAS GUTIERREZ.
(Signed) FRANCISCO CASTILLO NEGRETE, *Secretary.*

Señor Superior Political Chief: In compliance with the superior decree of the 22d of January of the present year, on this petition of citizen Nicholas Higuera respecting the land of Napa, the ayuntamiento of this demarcation says the following:

That the petitioner possesses the requisites necessary to be attended to; that the land asked for is not comprehended in the 20 bordor leagues, but is in ten littoral leagues; it is irrigable, dependant on the seasons and pasture land; said place was occupied by the mission of San Solano, but this ayuntamiento is ignorant whether it is now occupied by that pueblo, but the commissioner or mayor domo of Sonoma can inform.

Pueblo de San Francisco, March 11, 1836.

(Signed) JOSÉ JOAQUIN ESTUDILLO.
(Signed) FRANCISCO SANCHES, *Secretary.*

Administration of S. Francisco de Assis.

Under date of 11th of March last the alcalde of the pueblo of San Francisco sent me two espedientes for report, in compliance with the superior decree in the margin of these espedientes, and as I
211 have no knowledge of these lands, inasmuch as they do not belong to my charge, and as I know that they pertain to that of the ex mission of San Solano, you alone can report upon the matter, being the administrator of said ("lands.")

God and liberty. Pueblo of Dolores, Apr. 16, 1836.

To the administrator of San Solano.

(Signed) GAN'DO FLORES.

The administrator of San Francisco de Assis, in an official note of the 16th of the present month, sends me the two espedientes moved by citizen Ygnacio Pacheco and Nicholas Yguera to report as asked in his said official communication, and in order to facilitate their advancement, I will say that the lands asked for are not occupied by the natives of this pueblo, nor by the stock or cattle under my charge, for the former have their ranchos established in common, and the latter occupy the place of Suscol to the straits of Carquines, where they trouble no one by their location.

With respect to the persons who petition, they possess the requisites to entitle them to be attended to, and the lands are not included in the twenty border leagues, but are in the ten literal, which are referred to in the law of August 18th, 1824, according to the report of the illustrious ayuntamiento of San Francisco de Asis. The three afore-

said annexed documents I have the honor to send herewith to your excellency for the ends which you may please.

God and liberty. Sonoma, April 24, 1836.

(Signed) ANTONIO ORTEGA.

212 SEÑOR POLITICAL CHIEF OF UPPER CALIFORNIA.: These are true copies of the two documents sent to me and incorporated in the espediente of Ygnacio Pacheco.

Monterey, May 5th, 1836.

(Signed) CASTILLO.

MONTEREY, *May 19th*, 1836.

Having seen the petition at the beginning of this espediente, the report of the ayuntamiento of San Francisco, that of the administrators of the missions of San Francisco d Assis and of San Francisco Solano, with all else presented and proper to be seen: In conformity with what is provided in the laws and regulations on the matter, Nicholas Higuera is declared owner in fee of the land known by the name of "Entree Napa," as explained by the map which goes with the espediente. Let the corresponding despatch issue, take note of it in the respective book, deliver it to the party interested, and reserve this espediente in order to report to the excellent deputation for its approbation. Señor Don Mariano Chico, superior political chief of Upper California, thus ordered, decreed, and signed, of which I certify.

(Signed) MARIANO CHICO.

(Signed) FRANCISCO CASTILLO NEGRETE, *Secretary.*

On the 31st of May, passed to the committee on vacant lands.

(Signed) MALDONADO, *Secretary.*

Endorsed: "No. 323 B," part of Entre Napa. Translation of espediente, Julius Martin.

213 Filed in office Sept. 4th, 1852.

GEORGE FISHER, *Sec'y.*

Recorded in E. B., vol. 13 to E. B. and G. 465.

GEORGE FISHER, *Sec'y.*

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the four preceding and hereunto annexed pages exhibit a true, full, and correct copy of a translation of an expediente in case No. 34, Julius Martin, for a part of the Entre Napa, together

with the endorsements thereon, the original being on file in the records of the said board of land commissioners.

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San [SEAL] Francisco, this nineteenth day of July, 1861.

E. F. BEALE,
U. S. Surveyor General for California.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

214 *Exhibit Hopkins C, attached to dep. of R. C. Hopkins, cl't's witness.*

1845.

Proceedings at the instance of Don Juan Nopomuceno Padilla, who petitions for a parcel of land called "Roblar de la Miseria."—484.

Fourth seal, two reales.

Authorized provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

PABLO DE LA GUERRA.
MICHELTORENA.

To his honor the constitutional 1st judge of Sonoma:

Juan N Padilla, a resident of this district, as may be most expedient, before your honor appear and say, that I have to apply to the departmental government, through a memorial, and solicit for my future welfare the place known by the name of "Roblar de la Miseria," containing 3 or 4 square leagues, (sitios de ganado mayor) little more or less, bounded on the east by land of Don Mariano G. Vallejo, on the north by that of Don Juan Castañeda, on the west by that of Don Juan Vioget, on the south by that of Don Bartolo Bojorques, and on the southeast by that of Don Juan Miranda.

Now, considering that I have to go as far as Monterey with my petition, only to obtain the decree of his excellency the governor to the respective judge to report whether in fact the place I petition for is, or is not, unappropriated, (valdio) and being anxious to obtain as soon as possible the favor of a grant to the place I claim, in view of the distance from this place to Monterey I request your honor
215 to be pleased to ask for the report of the bordering neighbors, beforehand, and certify to me the same, that I may annex it to this document and transmit them both to the departmental government; making oath that this is not done in malice, and whatever else may be deemed necessary, &c.

Sonoma, November 26th, 1844.

JUAN N. PADILLA.

OFFICE OF THE 1ST JUDGE, *Sonoma, Nov.* 26, 1844.

In my opinion I deem it proper to ask for the reports of the bordering neighbors, to know whether the land solicited by the interested

party is unappropriated (valdio) or not, in order to declare the same in fact.

JACOB LEESE.

The undersigned do declare in due form that the place known by the name of "Roblar de la Miseria" contains in fact 3 or 4 square leagues (sitios de ganado mayor) as expressed by the interested party, and that it does not belong to any private individual whatever; which we certify at the request of the party interested.

Before the first judge of Sonoma, this 26th day of November, 1844.

J. VIOGET.

To his honor the alcade Don Luis Leese:

The land known by the name of "Roblar de la Miseria," petitioned for by Don Juan Padilla, bounded on the east by that of Petaluma, and its property as far as the hillocks of the same place solicited for in this petition, is unoccupied, (valdio) and I believe that it does not belong to any particular individual nor pueblo, and the subscriber believes that the boundaries bordering on the rest of the
216 ranchos are the same as those mentioned in this petition.

Sonoma, 11th of December, 1844.

M. G. VALLEJO.

To the hon'b'le secretary of state:

Juan N. Padilla, with due respect, before your honor, represents that I have come to the capital only with the object of presenting to his excellency the governor a petition, in which I solicit a parcel of land called "Roblar de la Miseria," in the jurisdiction of Sonoma, containing three square leagues, (sitios de ganado mayor) a little more or less, as is shown by the annexed documents which I have the honor to herewith present, together with the reports of the judge of that place, and that of the bordering neighbors. But as his exc'y the general is not now here, I request your honor to dispose of the matter in the way you may deem proper, so that I may use said land while I obtain the corresponding confirmation.

Monterey, Jan'y 20th, 1845.

JUAN N. PADILLA.

For the knowledge of his exc'y the governor, and in compliance with the petition addressed to this office of the government by Señor Padilla, I have to report that the land solicited is vacant and in the case of its being granted, it does not injure the bordering neighbors, as they themselves certify, as well as his honor the alcade of Sonoma, for which, in the opinion of the secretary, there exists no objection to the gov't granting said land to the petitioner, who also has proved the circumstances of a good char-
217 acter and ought to be attended to and preferred to any other person, because he already occupies it with his personal property, having obtained the right to said land in good faith. For which convenient purpose I give him the present report, in Monterey, 20th of January, 1845.

MANUEL JIMENO.

To his exc'y the governor:

Juan Nepomuceno Padilla, a Mexican by birth, resident of the jurisdiction of Sonoma, with due respect and submission before your excellency, appear and say: That having acquired in the year last past a certain number of head of cattle and a drove of horses, I solicited of the superior government of the department a parcel of land known by the name of ("Roblar de la Miseria;") but his excellency the governor, your predecessor, not having been able to issue in my favor the title-deed of concession, I solicited for said place of "de la Miseria." By reason of the political disturbances that the country underwent, I could only obtain such reports in my behalf as exist in the documents I herein annex for your exc'y's better knowledge; the first being from the 1st judge of this place, and the second from the secretary of state of this government; wherefore, as a trait of your generosity, I request that your excellency will be pleased to grant me the said parcel of land of "Roblar de la Miseria," containing three and a half or four leagues, (sitios de ganado mayor,) little more or less, at first view, according to the design (plot) I hereunto
218 annex, the same being bounded on the east by land of Mariano G. Vallejo from the passage of the inlet of Olampali; on the north, as far as the hillocks of the aforementioned "Roblar," and on the north, as far as the borders of the plain of Cotaté, a rancho of Don Juan Castañares; on the west, by the rancho of Don Juan Vioget; on the south, by the lagoon of San Antonio, belonging to Don Bartolo Bojorques; on the southeast, by that of Don Juan Miranda; said land being actually occupied by myself, with my stock, my laborers, &c.

I would therefore humbly request that your excellency be pleased to decree the concession I ask for, by which I shall receive the favor and justice I implore, making oath of all it may be deemed necessary, &c., requesting you may admit this on common paper, because there is not the corresponding stamped paper in this place.

ANGELES, *October 24th*, 1845.
Let this petition be annexed to the preceding documents.
PICO.

SONGMA, *August 28th*, 1845.
Yerba Buena.
JUAN N. PADILLA.

ANGELES, *November 25th*, 1845.

Having examined the petition heading these proceedings, the reports hereon attested, with every other fact represented, all in conformity with the law of August 18th, 1824, and the regulations of November 21st, 1828, I declare Don Juan Nepomuceno Padilla owner of the parcel of land called ("Roblar de la Miseria.") Let the corresponding patent be issued, reserving these proceedings to be submitted for the approval of the excellent assembly.

Pio Pico, provisional governor of the department of the Californias, thus did command, decree, and sign; which I attest.
219 PIO PICO.
JOSE MARIA COVARUBIAS, *Sec'y.*

Pio Pico, senior member of the departmental assembly and provisional governor of the Californias:

Whereas Don Juan Nepomuceno Padilla has petitioned, for his own benefit and that of his family, the parcel of land known by the name of "Roblar de la Miseria," bounded by lands of Don Mariano G. Vallejo, Don Juan Castañeda, Don Juan Vioget, Don Bartolo Bojorquez, and Don Juan Miranda, having complied with the required investigations: Now, by virtue of the authority in me vested in the name of the Mexican nation, I have thought proper, by a decree of this day's date, to grant him said parcel of land, declaring the same to be his property by these letters patent, entirely in conformity with the law of August the 18th, 1824, and the regulations of the 21st November, 1828, subject to the approbation of the excellent departmental assembly, and under the following conditions:

1st. He may fence it without obstructing crossings, roads, and servitudes; he shall enjoy it freely and exclusively, putting it to the use and culture he may deem best, but he shall cause a house to be built, which shall be inhabited, to occupy the same, with other personal property.

2nd. He shall solicit the proper judge to give him lawful possession by virtue of this patent, by whom shall be marked the boundaries, with the necessary landmarks, respecting in every case the legal right of the bordering neighbors.

220 3d. The parcel of land of which donation is made is of the extent of four square leagues, (sitios de ganado mayor,) little more or less, as is explained by the design attached to these proceedings. The judge who shall give possession will cause it to be measured agreeably to ordinance.

Therefore I command that, holding the present title as firm and valid, the same be entered in the proper book, and be delivered to the interested party for his own security, and other purposes.

Given in the city of Los Angeles, on this common paper, there not being any stamped sheets here, on the twenty-fifth day of November, 1845.

A note of this title has been made in the corresponding book.

Having submitted these proceedings to the exc't departmental assembly, in their session of to day, they ordered it to be referred to the committee on public lands.

PIO PICO, *President.*
AUGUSTIN OLIVERA, *D. S.*

SIR: The committee on public lands has with strict care examined the present proceedings, at the instance of citizen Juan Nepomuceno Padilla, relative to the place called "Roblar de la Miseria," granted to him by the superior departmental government, in accordance with the laws upon the matter. In virtue of this they submit to your excellency the following proposition:

They approve of the concession made in favor of the citizen
221 Juan Nepomuceno Padilla of the place of "Roblar de la Mise-

ria," in the jurisdiction of Sonoma, of the extent of four square leagues, (sitios de ganado mayor,) little more or less, according to the title-deed issued on the 25th November ulto., in conformity with the law of August 18th, 1824, and article 5th of the regulations of November 21st, 1828.

(Signed) S. ARGUELLO.

HALL OF THE COMMITTEE,
City of Los Angeles, May 26th, 1846.

ANGELES, *June 3d,* 1846.

In their session of this day's date the excellent departmental assembly approved the proposition of the preceeding opinion.

Translated by J. C.

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed pages, numbered from one to nine, inclusive, exhibit a true, full, and correct copy of a document entitled as follows: "1845, proceedings at the instance of D. Juan Nepomuceno Padilla, who petitions for a parcel of land, called 'Roblar de la Miseria,' 484," as the same appears on file in case No. 69, on the docket of the aforesaid board of commissioners, now in my office, together with
222 the endorsement on page numbered 12 hereof.

In testimony whereof I have hereunto signed my name offi-
[SEAL.] cially, and caused my seal of office to be affixed, at the city of San Francisco, this 20th day of October, 1858.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

JOHN W. SHORE,
Keeper of Archives, &c.

Endorsed: No. 69, Daniel Wright, *et al.* Roblar de la Miseria. C. Translation. Translation of the title deed for the "Roblar de la Miseria."

JUAN N. PADILLA.

Filed in office Feb'y 24th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Record of Evidence, vol. 7, p. 297–301.

GEO. FISHER, *Sec'y.*

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit Hopkins D, attached to dep. of R. C. Hopkins, cl'm't's witness.—Translation of espediente for "Arroyo de San Antonio."

Proceedings at the instance of the citizen Juan Miranda, petitioning for the land named "Arroyo de San Antonio," No. 397.

Fourth seal, twenty-five cents.

Authorised provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

MICHELTORENA.
PABLO DE LA GUERRA.

To the 1st alcalde of Sonoma:

Juan Miranda, a resident and settled within the jurisdiction
223 of Sonoma, before your honor, represents that for more than four years he has been in possion of a place (sitio) on the arroyo of San Antonio, which was provisionally granted to him by Señor Don Guadalupe Vallejo, the papers in relation to which concession, it seems, have been misplaced; that although he has endeavored to recover them, they have not been found, for which reason he represents anew, saying that on said place (sitios) are maintained the regular number of flocks and herds, and the requisite cultivation.

Wherefore he supplicates your honor that the necessary and accustomed steps may be taken in order to obtain the title to said rancho. He petitions for three sitios, (tres sitios,) as is laid down on the accompanying map, for all of which he will remain obliged.

Feb. 21st, 1844.

JUAN MIRANDA.

I certify that the land solicited has been occupied several years by the interested party; that it does not pertain to any pueblo or corporation whatever.

Sonoma, Feb. 20, 1844.

JACOB P. LEESE.

MONTEREY, *April 30th*, 1844.

Let the secretary of state report upon the same.

MICHELTORENA.

To his excellency the governor:

The party interested has occupied the land he claims for four years, by cultivation and by having a house thereon, with all his goods. Said land never has belonged to any one in particular, as is manifested by the report of the justice of Sonoma, for which reason, and because the claimant is an honorable man, and burdened with a family, he merits that your excellency should grant him the favor of acceding
224 to his solicitude, if you should deem it expedient.

Monterey, May 2nd, 1844.

MANUEL JIMENO.

MONTEREY, *May* 3*d*, 1844.

Let the title issue.

MICHELTORENA.

MONTEREY, *Oct.* 8, 1844.

In view of the petition which commences this espediente, the foregoing reports, and all the rest that was borne in mind and necessary to be observed, in conformity with the laws and regulations on the subject, I declare Don Juan Miranda owner in property of the place known by the name of "Arroyo de San Antonio," bounded by the laguna and arroyo of the same name, by the crossing and estero of Petaluma. Let the corresponding title be made out and entered in the respective book, and let this espediente be forwarded to the most excellent departmental assembly for its approval.

His excellency Señor Don Manuel Micheltorena, brigadier general of the Mexican army, governor and commandant general of the department of the Californias, thus did command, decree, and sign, whereof I bear witness.

First seal, eight dollars.

Authorized provisionally by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

MICHELTORENA.
PABLO DE LA GUERRA.

The citizen, Manuel Micheltorena, brigadier general of Mexican army, adjutant general of the staff of the same, governor, commandant general, and inspector of the department of the Californias:

[SEAL.] Whereas Don Juan Miranda has solicited, for his personal
225 benefit and that of his family, the land which is named "Arroyo de San Antonio," bounded by the laguna and arroyo of the same name, with the crossing and estero of Petaluma, the previous steps and investigations having been taken and made as required by the laws and regulations on the subject, by virtue of the authority vested in me, in the name of the Mexican nation, I have determined to grant to him the said land, subjecting it to the most excellent departmental assembly, under the following conditions:

1st. He shall not sell, alienate, nor mortgage it, impose ground-rent, entail, nor any other incumbrance, nor even convey it as a donation.

2nd. He may fence it without prejudice to the crossings made, and public uses. He shall enjoy it freely and exclusively, destining it to the use or cultivation which may best suit him.

3d. The land of which donation is made consists of three square leagues, (tres sitios de ganado mayor,) as is explained by the respective map. The justice who gives the possession will have it measured according to law, the surplus that may result remaining to the nation for its convenient uses.

4th. If he violate these conditions, he will lose his right to the land, and it will be denounceable by another.

In consequence whereof, I command that the present title being held as firm and valid, an entry be made of it in the respective book, and that it be delivered to the interested party for his security and further ends.

Given in Monterey on the 8th of October, 1844.

The citizen, Manuel Micheltorena, brigadier general of the
226 Mexican army, adjutant general of the staff of the same, governor, commandant general, and inspector of the department of the Californias:

Whereas Don Juan Miranda has solicited, for his personal benefit and that of his family, the land which is named Arroyo de San Antonio, "bounded by the laguna and arroyo of the same name, with the crossings and estero of Petaluma, the previous steps and investigations having been taken and made as required by the laws and regulations on the subject, by virtue of the authority vested in me, in the name of the Mexican nation, I have determined to grant to him the said land, subjecting it to the most excellent departmental assembly, under the following conditions:

1st. He shall not sell, alienate, nor mortgage it, impose ground-rent, entail, nor any other incumbrance, nor even convey it as a donation.

2nd. He may fence it without prejudice to the crossings, roads, and public uses. He shall enjoy it freely and exclusively, destining it to the use or cultivation which may best suit him.

3rd. The land of which donation is made consists of three square leagues, (tres sitios de ganada mayor,) as is explained by the respective map. The justice who gives the possession will have it measured according to law, the surplus that may result remaining to the nation for its convenient uses.

4th. If he violate these conditions, he will lose his right to the land, and it will be denounceable by another.

In consequence whereof, I command that the present title being held as firm and valid, an entry be made of it in the respective book,
and that it be delivered to the interested party for his security
227 and further ends.

Given in Monterey on the 8th of October, 1844.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk*.

Exhibit Hopkins E, attached to dep. of R. C. Hopkins, cl'm't's witness.

MOST EXCELLENT SIR: I have rec'd the official note of your excellency of the 1st inst., in which you were pleased to convoke me as a member of the excellent departmental junta, that said corporation may commence its ordinary sessions on the 1st of Jan'y next.

I pray your excellency to be pleased to reflect that article 11 of

the 6th constitutional law fixes the term of four years as the time of the duration of the departmental juntas, at the end of which time they must be entirely renewed; and the 8th transitory article provides that said period shall commence on the first day of January, 1837, no matter at what time the members may have commenced to discharge their duties by virtue of the appointments under the constitutional laws; so that, at the close of the present month the legal existence of the departmental junta, of which I have the honor to be a member, will have ceased, and cannot, therefore, legally continue its sessions in the month of January next, since the law clearly prohibits the same.

The members wanting the legal authority, their acts would want the moral force which, up to the 31st of December, 1840, would be given them by law. The reasons above set forth, together 228 with the infirm state of my health, rendering it improper for me to go to a climate like that of Monterey, impel me to pray your excellency to excuse me from undertaking the long and tedious journey to the capitol.

Your excellency will be pleased to accept the demonstrations of my affectionate regard.

God and liberty.

MAN'L REQUENA.

ANGELES, *Dec.* 11, 1840.

To his excellency the gov. of the dep't:

Having received the official note which, on the 1st of December, your excellency was pleased to transmit to me, requiring me, in accordance with article 1st of the interior regulations of the departmental junta, of which I am a member, to present myself in Monterey, at the meeting of said junta, in ordinary sessions, which are to be opened on the said day, (1st of Jan'y,) in reply, I have to say to your excellency, that on account of the condition of my health, I find it impossible to comply with said order.

Your excellency will be pleased to represent the same to the most excellent departmental junta, accepting the assurance of my considerations.

God and liberty.

PIO PICO.

ANGELES, *Dec.* 13, 1840.

To his excellency the gov. of the dep't of Californias:

The foregoing are correct translations from the originals found on pages 213, 214, 215, 216, and 217, V. II. s. p.—1840.

R. C. HOPKINS.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

229 *Exhibit Hopkins F, attached to dep. of R. C. Hopkins, cl'm't's witness.*

Expediente No. 47.

SEBASTIAN RODRIGUEZ.—RANCHO SALSEPUEDES.

Entered on the *Jimeno index* as *conceded;* but espediente shows no concession or grant.

Expediente No. 48.

TRINIDAD ESPINOZA.—RANCHO S. MIGUEL.

Entered on *Jimeno index* as *conceded;* but espediente shows that grant was *refused.*

Expediente No. 56.

JOSÉ ANT'O BOTELLER.—EL PESCADERO.

Entered on Jimeno index as *conceded;* but expediente shows that grant was *refused.*

Expediente No. 67.

ROBERTO PRADO.—LAGUNA.

Entered on Jimeno index as *negado,* (refused;) but espediente shows that *concession was made.*

Expediente No. 106.

A. M. CASTRO.—PARJENES.

Entered on Jimeno index as *conceded;* but expediente shows no concession.

Expediente No. 108.

SEBASTIAN RODRIGUEZ.

Entered on Jimeno index as *conceded;* but expediente shows no concession.

Thence—

Expediente No. 112.

ALEJANDRO RODREGUEZ.—ESTEROS.

Entered on Jimeno index as conceded; but *expediente* shows no concession.

Expediente No. 212.

F'CO P. PACHECO.—BOLSA DE S. FELIPE.

Entered on Jimeno index as *conceded;* but *expediente* shows no *concession.*

230 *Expediente No.* 304.

JOAQUIN ALVARADO.—CANADA LARGA.

Entered on *Jimeno index* as conceded; but espediente shows *no concession.*

Expediente No. 371.

RAFAEL FELIZ.—PESCADERO.

Entered on *Jimeno index* as conceded; but *exp'te* shows no *concession.*

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit Hopkins G, attached to dep. of R. C. Hopkins, cl'm't's witness.

Confecha 4, de Junio dije a V. S. lo siguiente "en virtud de la facultad q. me concede el reglamento provisional de secularisacion de misiones de nombrar mayordomo q. administre lo intereses de este he nombrado y esta administrando los el ciud'o. Antonio Ortega lo q. aviso a V. S. con objeto de q se sirva dar su aprovacion." Y lo hago 2a ver con el mismo objeto.

Dios y libertad. Sonoma, O'bre 20 de 1835.

M. G. VALLEJO.

Sor Gefe Superior Pol'co del Alta Territoria.

Secularasion de Sn. Fran'co Solano.—C.

Que se aprueba el nomb'ro ha echo Cn. Ortega pa. mayordomo y q sele señalar 500 ps. de sueldo.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my
231 charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the two preceding and hereunto annexed pages of tracing paper, numbered from one to two, inclusive, exhibit a true, full, and correct copy of an original document now on file, and forming part of the archives aforesaid in my office, and being pages 617 and 618 of a bound volume, forming a part of said archives entitled "State Papers, Vol. VI, Mission, 1835–1840, which still remains on file among said archives in my charge and custody.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this eighth day of May, 1861.

J. W. MANDEVILLE,

U. S. Surveyor General for California.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

Exhibit Hopkins H, attached to dep. of R. C. Hopkins, cl'm't's witness.

SECULARIZATION OF SAN FRAN'CO DE SOLANO.

Under date of 4th of June last, I said to your *Señorio* that which follows: "By virtue of the authority conceded to me by the provisional regulations for the secularization of missions to appoint a mayordomo, who may administer the interests of this I have appointed, and he is now administering the same, the citizen Antonio Ortega, of which I inform your *señorio* that you may approve said appointment."
232 And I inform you the second time of the said fact for the same object.

God and liberty. Sonoma, Oct. 20, 1835.

M'NO G. VALLEJO.

To the superior political chief of the territory:

Marginal order of gov.

That the appointment which has been made of Ortega, as mayordomo, is approved, and that there is assigned to him a salary of $500.

(Signed by the rubrica of Figueroa.)

The foregoing is a correct translation of the original found in the archives of the office of the U. S. sur. gen'l for Cal'a.

San F'co, May 8, 1861.

R. C. HOPKINS, *Keeper of Archives.*

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Copy of espediente No. 397, *referred to in deposition of R. C. Hopkins, for claimant.*

1844.

Espediente promovido por el ciudadano Juan Miranda en solicitud del del terreno nombrado Arroyo de San Antonio, No. 397.

Sello cuarto, dos reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA.

PABLO DE LA GUERRA.

[SEAL.] Sor Alcalde So. de Sonoma.

Juan Miranda, vecino y radicado en la jurisdiccion de Sonoma, hante V. con el respeto q. deve, hase presente q. hase moy de
233 cuatro años q. se hallo poseyondo un sitio en el Arroyo de S. Antonio el q. le fue concedido provicionam'te pr. el sor Dn.

Guadalupe Vallejo cuyos papeles, para la pretencion parece se han tras papelado, q. aun que las ha reclamado no han parecido pr. cuyo motivo representa de nuevo, diciendo q. en tho sitio mantiene un. n'o regular de ganado cabellada y siembras portanto suplica á V. se sirva q. se corran los transites de estilo pa. pedir el titulo de tho rancho pues solisita tres sitios segun demarca el adjunto diceño en todo lo q'e queda va reconocido.

Sonoma F'bro 21 de 1844.

J'N MIRANDA.

Certifico q'e el terro q'e solicita esta ocupado algunos años, por el enteresado y no pertenece á pueblo ne corporacion alg'a.

Sonoma, Feb'o 20 de 1844.

JACOB P. LEESE.

MONTERREY, *Ab'l* 30 *de* 1844.

Ynf'e el S. s'rio del despacho.

MICHELT'A.

Exmo Sor Gobernador:

El interesado hace cuatro años que tiene occupado el terreno que pretende, con Casa Llavares y todos sus bienes, pues nunca há pertenendo á particular alguno el d'ho terreno segun manifesta el juez de Sonoma p'r cuyo motivo y por ser el pretendiente un hombre honrado y cargado de familiá se hace acredor para que V. E. se digne concederle su solicitud, si asi lo tuviese por conveniente.

Monterey, Mayo 2 de 1844.

MAN'L JIMENO.

MONTERREY, *Mayo* 3 *de* 1844.

Espidase el titulo.

MICHELT'A.

234 MONTERREY, *Octubre ocho de* 1844.

Vista la peticion con que da principio este espediente las informes que preceder con toda lo demas que se tuvo presente y deber convino de conformidad con las leyes y reglamentos de la materia declaro à D. Juan Miranda dueño en propriedad del parage conocido con el nombre de arroyo de San Antonio colindante con la laguna y arroyo del mismo nombre con el paso y estero de Petaluma.

Librese el correspondiente despacho, tomese razon en el libro respectivo y dirajase este espediente á la exma asamblea departamental para su aprobacion. El Exmo Sor D. Manuel Micheltorena, general de brigada del ejercito Mejicano gobernador y comand'te g'r'al de este departm'te de California asi lo mandó decreto y firmó de que doy fee.

Sello primero, ocho pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterrey en el departamente de las Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA.

PABLO DE LA GUERRA.

El ciudadano Manuel Micheltorena, general de brigada del ejercito Mejicano, ayundante g'ral de la plana mayor del mismo, gobernador comand'te g'ral é ynspector del departam'te de California:

[SEAL.] Por cuanto D. Juan Miranda ha pretendido para su veneficio personal y el de su familia el terreno que se
235 nombre Arroyo de San Antonio, colindante con la laguna y arroyo del mismo nombre con el paso y estero de Petaluma; practicados previamente las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y reglamentos de la materia, usando de las facultades que me son conferidas á nombre de la nacion Mejicana he venido en concederle el terreno mencionado sugetandose a la exma. asamblea departamental y bajo las condiciones siguientes:

1a. No podra venderlo enagenarlo ni potecarlo, imponer censo vinculo ni otro gravamen alguno y ni aun donarlo.

2a. Podrá sercarlo sin perjudicar las traversias, caminos y servidumbres lo disputará, libre y exclusivamente destinandolo al uso ó cultivo que mas le acomode.

3a. El terreno de que se hace donacion es de tres sitios de ganado mayor segun lo esplica el diseño respectivo. El juez que diere la posesion lo hará medir conforme á ordenanz a quedando el sobrante que resulte á la nacion para los usos convenientes.

4a. Si contraviniera á estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia mando que teniendose por firme y valedero el presente titulo se tome razon de él en el libro respectivo y sé entregue al interesado para su resguardo y demas fines.

Dado en Monterey á ocho de Octubre mil ochocientos cuarenta y cuatro.

(Here follows map, marked original, page 237.)

239 El ciudadano Manuel Micheltorena, general de brigada del ejercito Mejicano ayudnante g'ral de la plana mayor del mismo gobernador comandante g'ral é inspector del departam'te de Californias:

Por cuanto D. Juan Miranda ha pretendido para su beneficio personal y el de su familia el terreno que se nombra arroyo de San Antonio, colindante con la laguna y arroyo del mismo nombre con el paso y estero de Petaluma; practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuesto por leyes y raglamentos de la materia usandó de las facultades que me son conferidas á nombre de la nacion Mejicana he venido su conceder el terreno mencionada sugetandose á la ex'ma junta departamental y bajo las condiciones siguientes:

1a. No podra venderlo enagenarlo ni potecarlo, imponer censo, vinculo ni otro gravamen alguno y ni aun donarlo.

2a. Podrá sercarlo sin perjudicar las travesias caminos y servidumbres, lo disputará libre y exclusivamente destinandolo al uso'o cultivo que mas le acomode.

3a. El terreno de que se hace donaciones de tres sitios de ganado mayor segun esplica al diseño respectivo. El juez que diere la pose-

cion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

4a. Si contraviniere á estos condiciones perderá sue dho al terreno y sera denunciable por otro.

En consecuencia mando que teniendose por firme y valedero
240 el presente titulo se tome razon de él en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á ocho de Octubre de mil ochocientos cuarenta y cuatro.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine, inclusive, exhibit a true, full, and correct copy of a document entitled "1844, espediente promovedo por el ciudadano Juan Miranda en solicitud del del terreno nombrado arroyo de San Antonio, No. 397," as the same appears on file among said archives.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this 27th day of June, 1859.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

241 *Deposition of George Fisher, claimant's witness.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ELLEN E. WHITE, adm'x. } In land cases.—Dist. court No. 346.—Land Com. No. 558.

Be it remembered, that on this 9th day of August, A. D. 1861, at San Francisco, in the district aforesaid before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California, to take acknowledgements of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared George Fisher, a witness

produced in behalf of the claimant in the above-entitled cause, now pending in said court under, the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp, U. S. att'y, by J. J. Williams; Volney E. Howard, for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, and place of residence?

Ans. 1. George Fisher; am over 21 years of age; I reside in San Francisco. I was secretary of the board of land commissioners from 1851 to the time of its abolishment.

Ques. 2. Look at what purport to be the depositions of
242 Francesca Miranda and Teodora Miranda, and state all you know in relation to the taking of the same, and the endorsements thereon, as originally made and as they now appear.

Ans. 2. The purport of these depositions were that they were taken before Commissioner Peter Lott, in whose handwriting the bodies of the same are written, with which handwriting I am very well acquainted. They were taken in behalf of the United States, by B. S. Brooks, acting in behalf of the U. S. law agent, John McKune.

They were filed in the office of the U. S. board of land commissioners on the 18th day of January, A. D. 1855, and subsequently to the day upon which the case was submitted to the board of commissioners, which was on the 2d day of January, A. D. 1855. The case was submitted to the court without argument, and upon written briefs.

On the 24th day of April, 1855, John McKune, esq., U. S. law agent, filed a motion and affidavit in reference to these depositions, which motion was laid over, until the 22d May, 1855, upon which day the board overruled the motion and denied the petition as set forth in said affidavit.

(The motion and decision on said motion referred to is here annexed to this deposition, marked, respectively, Exhibit Fisher No. 1, and Exhibit Fisher, No. 2.)

In consequence of the denial of the law agent's petition by the board, I, as the then secretary of the board, was instructed not to make these depositions a part of the record in the case, and have endorsed on each of the depositions the following words in red ink: "No
243 part of the record; this evidence was ruled out by the board, May 22d, '55," and handed them over to Mr. S. S. Rawson, one of the clerks in my office who occupied the same office with me, and was one of my assistants, instructing him to make an entry of my remark on these depositions on the book called "Register of Witnesses."

Mr. Rawson made the following endorsement in red ink in his own handwriting on each of the said depositions, "Not to be recorded," having made the following entry in the Register of Witnesses in red ink: "These depositions were ruled out, being taken after the case was submitted," opposite the names of Teodora Miranda and Francisca Miranda, witnesses, whose names were stricken out by running a

black line across them. A traced copy of this entry is hereto annexed to my deposition, marked Exhibit Fisher No. 3.

The memorandum made upon the loose sheet of paper, a copy of which is annexed to my deposition, marked Exhibit Fisher No. 4, being dated Jan'y, 18 1855, not having been recorded at the date of the decision on said depositions, whereby the said depositions were ruled out by the board, the recording clerk, Wm. B. Fleming, by my order, made the following entry in his own handwriting, opposite said memorandum: "ordered by Mr. Fisher not to make the entry;" consequently, no entry of said memorandum was made on the journal of the said board of commissioners.

Notwithstanding the endorsements made in red ink by me as such secretary, and by Mr. Rawson as such clerk, in our own proper handwritings, there appears at this time the following endorsements on the said original depositions in the handwriting of John B.
244 Guiteau, the recording clerk of evidence at that time, viz: "Recorded in vol. 20, Evidence Ex. D and G p. 369 and 372;" all the remarks in red ink in my handwriting and in the handwriting of Mr. Rawson, as above specified, having been previously imperfectly erased, and the endorsements in black ink, in the handwriting of John B. Guiteau, having, been in part written over the space where the remarks in red ink were previously written, but afterwards erased, part of which red ink writing is yet visible—part erased and part written over in black ink.

The recording of these depositions were not authorised by me as such secretary, nor was the erasures of the writing in red ink done by my authority, consent, or knowledge, who, as the chief of the clerical department of the said board, was the person authorised under the law to admit papers, filed in any case pending before the said board, under the sanction of the same, to be recorded.

Hence these depositions, contrary to the express instructions of the secretary endorsed on them in red ink, were clandestinely recorded, and by the erasures of my and Mr. Rawson's remarks on them, in red ink, a fraud was perpetrated by some person, to the secretary unknown, at the time these proceedings were had, or since then, by myself.

On the 26th day of June, 1855, Commissioner R. Augustus Thompson delivered the opinion of the board, confirming the claim, and the order of the board issued to transmit the transcript of the records in the case according to law.

No further or other proceedins in this case had been had
245 during the continuance of said board, except as above stated, from said date to its final adjournment, March 3d, 1856.

In accordance with the order of the board entered on the 26th June, 1855, two copies of all the proceedings of the board, the depositions of witnesses and documentary testimony, were made out and certified by the secretary in due form of law, were transmitted, one to the Attorney General of the United States, by mail, and the other filed with the clerk of the United States district clerk for the northern dist California, prior to the 3d day of March, 1856, in neither of which transcripts the depositions of Francisco Miranda and Teodoro Miranda, herein referred to, have been incorporated, as they did not constitute any part of the record in said case, as already stated.

Cross-examination.—Ques. by U. S. att'y.

(Before proceeding to cross-examine, the whole of the foregoing deposition is objected to as irrelevant, inasmuch as the said depositions were omitted from the record and never have been filed in the case. It is further objected to because no copies of said depositions have been filed)

Ques. 1. Observe on said depositions the endorsement, "filed in office Jan. 18, 1855, George Fisher, Sec'y," with a rubric, and state whether or not said signatures and rubrics is your genuine signature and rubric?

Ans. 1. They are my genuine signature and rubric.

246 Ques. 2. Is not a portion of the endorsement in red ink, to wit, "no part ofthe record," yet legible?

Ans. 2. It is.

Ques. 3. Are not all the endorsements in ink on said depositions either in your own handwriting or the handwriting of some of your clerks?

Ans. 3. They are not in my own handwriting except my signature and rubric; the endorsements are in the handwriting of three different clerks—Rawson, Fleming, and Guiteau.

Ques. 4. In what does the fraud consist of which you have spoken?

Ans. 4. In the erasures of the writing which was on them in red ink, made in the handwriting of Rawson and myself, as specified in my direct examination.

Ques. 5. Are not the words "Recorded in 20 volume, Ev., &c.," written over the said partial erasure, in the handwriting of Mr. Guiteau your recording clerk?

Ans. 5. They are.

Ques. 6. How can you characterise this act as a fraud upon any one, especially when the depositions were omitted from the record?

247 Ans. 6. The erasure I characterize as a fraud, because no one was authorised to erase any endorsement put upon a paper by myself, or by a clerk by my order, without my knowledge or consent; and this having been done without my authority, consent, or knowledge, bears evidence in my mind that the person or persons who made the erasures were prompted thereto for the purpose of suppressing the truth in regard to the recording of these depositions, and having the same been recorded without my authority, knowledge, and consent, the erasures were made, and the endorsements thereupon were made by Guiteau subsequent to the erasures.

Ques. 7. Did you not deliver over these two depositions to the surveyor general with other land commission papers, and are they not now a part of the records in his custody?

Ans. 7. I did not, nor did I deliver any paper or papers, or books, or anything which formerly constituted the archives of the U. S. land commissioners. They were delivered by some person to me unknown, inasmuch as I left the office about the first of April, 1856. The receipt of the surveyor general will show who delivered them.

Direct examination resumed.—Ques. by att'y for cl'm't.

Ques. 1. Please state how these depositions came to be filed.

Ans. 1. On the 18th January, 1855, the United States
248 law agent, J. McKune, brought these depositions into the secretary's office for the purpose of filing them; I remarked to him, to the best of my recollection, that, under the previous ruling of the board, no papers should be filed in a case after the same was submitted to the board, without a stipulation between the parties, and that this case, namely No. 558, having been submitted to the board and taken under advisement on the 2d January, 1855, I could not admit them. He answered or remarked that it was not for me, as secretary of the board, to decide the admissability of any paper that an attorney desires to file in his case, and that my province was to file the same. Under these circumstances, I passed the papers to Mr. Rawson to endorse the same, as he had to attend to that kind of business in my office, endorsing papers that were filed. He endorsed the same with many others and left them on my desk for signature. I signed the same, with many others that were filed the same day, before leaving my office at 4 o'clock p. m. that day; but under the ruling of the board of the 22d day of May, 1855, these papers having been excluded as evidence in the case, were considered as superfluous papers, but always kept in the same package with the other papers in the case, although bearing the endorsement not to be recorded. This evidence was ruled out by the board—no part of the record.

GEO. FISHER.

249 Subscribed and sworn to before me this 9th day of August, A. D. 1861.

CUTLER McALLISTER,
[SEAL.] *U. S. Comm'r.*

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit Fisher No. 1, *attached to the dep. of George Fisher, cl'm't's witness.*

No. 558.—Charles White, claimant.

J. H. McKune, U. S. law agent, says on oath, that when the above-entitled cause was submitted he was not present; that at the session of this board next before it was submitted, the claimant's attorney announced that the case was ready for submission, and affiant, on behalf of the government, stated that he was not ready, and desired that the depositions of two witnesses might be taken for submission. A subpœna had previously been issued for Francisca Miranda and Teodora Miranda, and they were produced as witnesses after the submission of the case, according to an oral understanding with V. E. Howard that the depositions should be taken and used in the case without being restored to the docket; but when the witnesses were

produced the attorneys for claimant neglected to appear for cross-examination, though notified verbally that we should proceed to take the deposition.

Affiant refers to the deposition of said witnesses herewith presented, and says he expects to prove the facts therein stated, if the case
250 is restored to the docket

J. H. McKUNE.

Subscribed and sworn to before me April 24th, 1855.

R. AUG. THOMPSON, *Com'r.*

Motion is made to restore the above case to the docket.

J. H. McKUNE,
U. S. Law Agent.

Endorsed:

No. 558.—Charles White.

Affidavit and motion of U. S. law agent filed in office April 24th, 1855.

GEO. FISHER, *Sec'y.*

Recorded in journal, vol. 4, page 278.
Overruled.

U. S. SUR. GEN'L OFFICE,
San Francisco, Cal.

I, J. W. Mandeville, sur. gen'l of the United States for the State of California, and as such having in my charge and custody the papers and documents of the late board of United States land commissioners appointed under the act of Congress to settle the private land claims in the State of California, do hereby certify the foregoing to be a true, full, and correct copy of an original document now on file in case No. 558, on the docket of the said board of United States land commissioners, together with the endorsements thereon, now in my custody and on file in my office.

Given under my hand and official seal, at my office in the
251 city of San Francisco, this 12th day of October, 1858.

[SEAL.] J. W. MANDEVILLE,
U. S. Sur. Gen'l.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit Fisher No. 2, attached to dep. of George Fisher, claimant's witness.

558.

In case No. 558, Charles White et al., for the place named San Antonio, Commissioner R. Aug. Thompson delivered the decision of

the board upon the motion and affidavit filed by the U. S. law agent, on the 24th of April, 1855, overruling the said motion and denying the petition.

U. S. SUR. GEN'L OFFICE,
San Francisco, Cal.

I, J. W. Mandeville, sur. gen'l of the United States for the State of California, and as such having in my charge and custody the papers and documents and some of the books of the late board of United States land commissioners appointed under the act of Congress to settle the private land claims in the State of California, do hereby certify the above to be a true, full, and correct copy of an original entry found on page sixteen (16) in journal No. 3, (now in my custody,) of the said board of United States land commissioners.

[SEAL.] Given under my hand and official seal, at my office in the city of San Francisco, this 12th day of October, 1858.

J. W. MANDEVILLE,
U. S. Sur. Gen'l.

252 Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit Fisher No. 3, *attached to dep. of George Fisher, claimant's witness.*

558.—Charles White, San Antonio.

John Martin		Jan. 9, 1855.
Teodoro Miranda,	These deps. were ruled out, being taken after the case was submitted.	Jan. 18, "
Francisca Miranda,		Jan. " "

Vide entr , p. 142.

I hereby certify that this is a true, full, and correct copy of a portion of an original record book of the late board of U. S. land commissioners, entitled Register of Witnesses, and found on page 230 of said book; the same being in my custody and remaining on file in my office. U. S. surveyor general's office, San Francisco, California, July 22nd, 1861.

[SEAL.] E. F. BEALE,
U. Sur. Gen'l, Cal.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit Fisher No. 4, *attached to the dep. of George Fisher, cl'm't's witness.*

558.

In case No. 558, widow and heirs of Charles White, for the place named "San Antonio," the depositions of Francisco Miranda and

Teodoro Miranda, witnesses on behalf of the U. S., taken before Commissioner Peter Lott, were filed, &c., &c.—(*Vide* Record of Evid., vol., p.—.)

Ordered by Mr. Fisher not to make the entry.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

253 I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed page of tracing paper, numbered from one to —, inclusive, exhibit a true, full, and correct copy of an original document in the land commission, entitled "Minutes of the proceedings of the 18th Jan'y, 1855," as the same appears in the docket of said land commission.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this 6th day of Aug'st, 1861.

E. F. BEALE,
U. S. Surveyor General for California.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

Deposition of Sam'l D. Pomeroy, cl'm't's witness.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ELLEN E. WHITE, adm'x, &c. } In land cases.—Dist. court No. 346.—Land com. No. 558.

Be it remembered, that on this 16th day of August, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the 254 United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Samuel D. Pomeroy, a witness produced in behalf of claimant in the above-entitled cause now pending in said court, under the acts of Congress, to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp, U. S. att'y, by J. B. Williams; Volney E. Howard, for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, and place of residence?

Ans. 1. Samuel D. Pomeroy. I am 39 years of age. I reside in Vallejo township, Sonoma county. I am a farmer by occupation.

Ques. 2. Are you acquainted with Antonio Ortega; and if yea, how long have you known him?

Ans. 2. I am acquainted with him; I first became acquainted with him in Oregon City, Oregon, in 1846. I have known him since 1846; I knew him for about a year at that time.

Ques. 3. During the time you have known him, do you know anything of his claiming a tract of land in California; and if yea, where was it situated?

(Objected to as incompetent.)

255 Ans. 3. I know it from his own statement made to me in Oregon City, Oregon, in 1846. He told me the land laid in Petaluma, California.

Ques. 4. Do you know under what title he claimed?

Ans. 4. I do not; no more than he told me it was a Mexican grant.

Ques. 5. When did you first come to California, and did you know Ortega in California?

Ans. 5. I came to California first in 1848. I knew Ortega in California. He still told me that he had land in Petaluma; called it on Petaluma creek; I know nothing about the boundaries. I mean by Petaluma, on Petaluma creek.

Ques. 6. Do you know of his exercising any acts of ownership over the land referred to?

Ans. 6. Only by hearsay and his own statement.

Ques. 7. Do you know anything of the efforts of Ortega, while in Oregon, to return to California?

Ans. 7. I do. He was there, and appeared to be out of money; he worked for my father there to get money to come to California.

(Whole of the above objected to as hearsay and incompetent.)

Cross-examination.—Ques. by U. S. att'y.

Ques. 8. Do you speak the Spanish language; and if so, for how long have you spoken it?

256 Ans. 8. I do not.

Ques. 9. Did Ortega speak the English language when you knew him in Oregon?

Ans. 9. He spoke a very little broken English.

Ques. 10. In answer to question 3d, you state that you knew Ortega claimed a tract of land in California, from his own statement. Was this statement made to you in broken English, or through an interpreter?

Ans. 10. It was made to me both in broken English and through an interpreter?

Ques. 11. Who was the interpreter?

Ans. 11. Stephen Meek, I think.

Ques. 12. Where is he now?

Ans. 12. In Lower California somewhere, I believe.

Ques. 13 How came Ortega to make this statement to you in Oregon?

Ans. 13. He became acquainted with me, and seemed anxious to get back to California.

Ques. 14. Did he state to you the extent of his claim, or when it was granted, or by whom?

257 Ans. 14. He stated to me none of these things, except that it was a Mexican grant.

Ques. 15. Whereabouts in California did you first know Ortega in 1848?

Ans. 15. In Sonoma.

Ques. 16. How long did you know him there?

Ans. 16. About 8 months.

Ques. 17. What was Ortega's occupation during that time?

Ans. 17. I can't say that I knew his occupation; he worked for Gen'l Vallejo part of the time.

Ques. 18. When did you leave Sonoma?

Ans. 18. In October, 1849.

Ques. 19. Did you leave Ortega living in Sonoma when you left there?

Ans. 19. I did. I have not seen him since.

Cross-examination closed.

Deposition closed.

SAMUEL D. POMROY.

Subscribed and sworn to before me this 16th day of August, A. D. 1861.

[SEAL.] CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

258 *Deposition of Irvy H. Fine, claimant's witness.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ELLEN E. WHITE, adm'x, &c. } In land cases —Dist. court—No. 346. Land com. No. 558.

Be it remembered, that on this 16th day of August, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Irvy H. Fine, a witness produced in behalf of claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle

the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp, U. S. att'y, by J. B. Williams; Volney E. Howard, for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, and place of residence?

Ans. 1. Irvy H. Fine. I am 40 years of age. I reside in Sonoma county. I have lived in that county since 1846.

Ques. 2. Are you acquainted with the rancho Arroyo de
259 San Antonio, situated in the county of Sonoma; and if yea, how long have you known it?

Ans. 2. I am acquainted with said rancho; I have known it since 1849.

Ques. 3. Who was the reputed owner of said rancho in 1849? and state all you know in relation to the ownership of the same.

Ans. 3. Ortega was the owner of that ranch in 1849. In the summer of 1849 Asa McDonald bought a tract of land of him.

About that time I wanted to buy some land myself. McDonald told Ortega that I wanted to purchase some land, and Ortega came to see me, and told me he would meet me at Gen'l Vallejo's house the next morning and show me his papers.

The next morning I went to Gen'l Vallejo's office, and Ortega was there, and Vallejo showed me Ortega's papers. He acted as interpreter on the occasion. I don't recollect particularly about the papers; Vallejo translated them to me.

Land was low in value then. I bought land in Suisun in 1847, and paid $1 an acre. By taking this land by the quantity I could have bought it near about at my own price.

Land at that time in Sonoma county was cheaper than in Napa or Suisun.

260 Ques. 4. Why did you not purchase of Ortega?

Ans. 4. Ortega's ranch was a grazing ranch, and I wanted farming land and did not think it would suit me.

Ques. 5. Had you any doubt as to the title?

Ans. 5. I had none.

(Above deposition objected to as irrelevant, incompetent, and hearsay.)

Cross-examination.—Ques. by U. S. att'y.

Ques. 6. In answer to question 3d you state that Ortega was the owner of that ranch in 1849. State whether you formed that opinion from information derived from any other source than Ortega and Gen'l Vallejo.

Ans. 6. I had it from Ortega and Gen'l Vallejo, and no others.

Ques. 7. Did Gen'l Vallejo assure you the title was good?

Ans. 7. He said it was.

Ques. 8. Would you have been satisfied with his representation, had you been determined to buy?

Ans. 8. I would.

Ques. 9. I understand then, that you considered Ortega the owner of the ranch, not so much from Ortega's own representation or
261 from the papers which he exhibited, as from your confidence in Gen'l Vallejo's statement to you?

Ans. 9. I had the most confidence in Gen'l Vallejo.

Ques. 10. Without Gen'l Vallejo's statement, and upon Ortega's representation alone, together with an inspection of the papers produced, would you have purchased and paid your money without any further investigation?

Ans. 10. I did not understand Spanish, and should have got some other person to have translated for me. I should not have bought on Ortega's representation alone.

Deposition closed.

J. H. FINE.

Subscribed and sworn to before me this 16th August, A. D. 1861.

[SEAL.] CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of Abraham Fine, claimant's witness.

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
ELLEN E. WHITE, adm'x, &c. } In land cases.—Dist. court No. 346.—Land com. No. 558.

Be it remembered, that on this 16th day of August, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of
262 bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Abraham Fine, a witness produced in behalf of claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp, U. S. att'y, by J. B. Williams; Volney E. Howard, for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, place of residence?

Ans. 1. Abraham Fine. I am 47 years of age. I reside in Sonoma.

Ques. 2. Are you acquainted with Antonio Ortega; if yea, how long have you known him, and where?

Ans. 2. I am acquainted with him; I got acquainted with him in the summer of 1849; I knew him in Sonoma.

Ques. 3. Are you acquainted with the rancho Arroyo de San Antonio, situated in the county of Sonoma; and if yea, do you know who claimed said rancho in the summer of 1849?

Ans. 3. I know the land; I know that Ortega claimed it in the summer of 1849.

263 Ques. 4. How do you know he claimed it?

Ans. 4. I heard him say so. He sold a portion of it to a man that I was in business with at that time.

Ques. 5. Who was generally reputed in Sonoma county, at that time, to be the owner of said ranch?

Ans. 5. I never heard at that time of any other claim to that ranch except Ortega's.

Ques. 6. Did you ever hear his title questioned at that time?

Ans 6. I never did.

(The above deposition objected to as irrelevant, impertinent, incompetent, and hearsay.)

Cross-examination.

Ques. 7. What was Ortega's occupation in Sonoma in 1849, when you knew him?

Ans. 7. He was bell-ringer in the church. I lived in Sonoma about a year, and Ortega lived there during that time. I don't know any occupation that he had during that time besides that. He officiated in the church, ringing the bell, and attending around there.

Ques. 8. In answer to question 4 you state Ortega sold a portion of the ranch to a man with whom you were in business at that time. State the name of the purchaser.

264 Ans. 8. His name was A. C. McDonald.

Ques. 9. What was the extent of his purchase, the price paid, and the terms of payment?

Ans. 9. The extent of the purchase was a league; I don't recollect what was the price; he paid some money down, and was to pay some more. I knew at the time all about the trade, but don't recollect the terms of the sale now. I think McDonald is now on Russian river.

Ques. 10. Did you know of Ortega's claim in 1849, except from his own statements?

Ans. 10. I heard Gen'l Vallejo say that he had a claim.

Ques. 11. Did Ortega show you any papers at that time purporting to be documents of title?

Ans. 11. Yes; he showed me some papers at that time that he said were his title-papers. I did not read Spanish at that time.

Ques. 12. Could you identify those papers now?

Ans. 12. No; I think not.

Ques. 13. Did you speak the Spanish language in 1849?

Ans. 13. Not well; I could speak some.

265 Ques. 14 When did you arrive in California?

Ans. 14. In the fall of 1847.

Ques. 15. From 1847 until 1849 was your business such as to make

you acquainted with the nature of claims to land by persons under the Mexican government?

Ans. 15. I stopped at Benicia when I first came here, and then I did business about three months where Martinez now is, commencing in January. When the mines were discovered I went off to them, and stayed there up to the rainy season; then I went to Sonoma and spent the winter there, and in spring of 1849 I went back to the mines; that summer I returned to Sonoma, and that was the time I became acquainted with the Ortega.

Ques. 16. In answer to ques. 5 you state you never heard at that time any other claim to that ranch except Ortega's, and in answer to ques. 6, that you never heard his title questioned at that time. Please state whether you made any investigation or enquiries concerning his title, or merely took his statement for granted, without feeling any particular interest in the matter.

Ans. 16. All I ever knew about it was what he said, and what Gen'l Vallejo said. I never had any occasion to make any investigation about it.

ABRAHAM FINE.

266 Subscribed and sworn to before me this 16th day of August, A. D. 1861.

[SEAL.] CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of James M. Hudspeth, cl'm't's witness.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* ELLEN E. WHITE, adm'x, &c. } In land cases.—Dist. court No. 346.—Land com. No. 558.

Be it remembered, that on this 16 day of Aug., A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared James M. Hudspeth, a witness produced in behalf of claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp, U. S. att'y, by J. B. Williams; Volney E. Howard, for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, place of residence, and occupation?

267 Ans. 1. James M. Hudspeth. I am 49 years of age. I reside in Sonoma county. I am a farmer by occupation.

Ques. 2. Are you acquainted with Antonio Ortega; if yea, how long have you been acquainted with him?

Ans. 2. I was acquainted with a man by the name of Ortega; I never knew his given name. I think I first saw Ortega in Sonoma in the fall of 1849.

Ques. 3. Do you know anything of his claiming land in Sonoma county in 1849; if yea, where was it situated?

Ans. 3. All I know about his claiming land was, that Mr. Fine came to me in the winter or fall of 1849 and made enquiries of me about the country about San Antonio creek; I told him I knew it. I believed the land was a very good tract of land. I told Mr. Fine that if he wanted to buy the land, that I would take an interest in the purchase. That is all that occurred at that time.

Ques. 4. Who did you understand to be the owner of that tract at that time? and state how you derived your knowledge.

Ans. 4. I understood that Ortega was the owner of the tract; and all that I knew about it was that he offered it for sale. I knew nothing about the papers; I never saw them.

268 Ques. 5. Who in 1849 was generally reputed, in Sonoma county, to be the owner of the rancho Arroyo de San Antonio?

(Objected to as incompetent, because it is not competent to prove the validity of a grant by general reputation.)

Ans. 5. Ortega.

(The whole of the above deposition objected to as hearsay and incompetent.)

Cross-examination.—Ques. by U. S. att'y.

Ques. 6. What was Ortega's occupation in Sonoma when you knew him in the fall of 1849?

Ans. 6. All that I knew of the old man's occupation was, I have seen him ring the church bell occasionally; he was a good deal about Gen'l Vallejo.

Ques. 7. In answer to ques. 5 you state that it was generally reputed in Sonoma county that Ortega was the owner of the rancho Arroyo de San Antonio. Please explain this more fully, and state to what extent, and whether such reputation arose from Ortega's own statements or otherwise?

Ans. 7. The only man with whom I now recollect of having had a conversation with about that ranch was a Mexican named Juan Lassada; I never heard anything from Ortega himself about the land. The only two persons that I recollect now of having spoken

269 to about that ranch were Fine and Lassada.

Direct examination resumed.

Ques. 8. To what extent were the different grants in Sonoma county, in 1849, spoken of by the inhabitants and American settlers?

Ans. 8. I heard all the ranchos around there spoken of—Ortega's; "Petaluma;" Guilico's; Mark West's; Fitch's; Cooper's; Joaquin Carrillo's grant, 'Cotati;' McIntosh's;" Capt. Smith's; Bodega; the Vioget ranch, Agua Caliente.

(Ques. and answer objected to as irrelevant.)

Deposition closed.

J. M. HUDSPETH.

Subscribed and sworn to before me this 16th day of August, A. D. 1861.

[SEAL.] CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of Zara T. Sweet, claimant's witness.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* ELLEN E. WHITE, adm'x. } In land cases.—Dist. court No. 346.—Land com. No. 558.

Be it remembered, that on this 16th day of August, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in
270 civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Zary T. Sweet, a witness, produced in behalf of claimant in the above entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp, U. S. att'y, by J. B. Williams; Volney E. Howard, for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, and place of residence?

Ans. 1. Zary T. Sweet. I am 45 years of age. I reside in Sonoma county, near Stony Point.

Ques. 2. Are you acquainted with Antonio Ortega; and if yea, how long have you known him, and where?

Ans. 2. I am acquainted with Antonio Ortega. I knew him for about 4 months in the year 1846, when he stayed in my house in Oregon City, Oregon.

Ques. 3. Do you know anything of Ortega claiming land in Cali-

fornia; if yea, where was it situated? State all you know in relation to it.

Ans. 3. I know that he claimed he had land here; that was in 1846. I don't know that I could name the place that he said it was, but I think it was on Petaluma creek. He offered to give me one-half of it, if I would come and reside on it, and that he would give me 30 head of cows, 10 head of mares; and all the considera-
271 tion he wanted of me for this was to live with him, and help him to raise his children, so as to Americanize them, he said.

Ques. 4. Do you know under what title he claimed?

Ans. 4. I do not.

Ques. 5. Do you know anything of Ortega's intention to return to California?

Ans. 5. Yes; he was very anxious to return.

Ques. 6. Do you know who was occupying his ranch during his absence?

Ans. 6. He said his wife and family were on it.

(Foregoing deposition objected to as irrelevant, incompetent, and hearsay.)

Cross-examination.

Ques. 7. What was your business in Oregon City during the time that Ortega stayed with you in 1846?

Ans. 7. I was head sawyer in a saw-mill. I was also keeping a boarding-house for the hands

Ques 8. What was Ortega's occupation during that time?

Ans. 8. Part of the time he was waiting on my house, bringing wood and water; the balance of the time bearing off lumber from the saw. He had an Indian boy who worked all the time at the mill for Ortega, to endeavour to get money for him to return to California. This was after they had started for California, got
272 shipwrecked, and lost everything.

Ques. 9. How much did Ortega and his boy earn over and above his board?

Ans 9. I think the boy got $20 a month. I don't know what Ortega got. His board cost him nothing. I did not charge him anything. He was a man I thought a good deal of, while he was with me.

I left Ortega in Oregon City. In the spring of 1847, I went to Washington Territory, and have never seen Ortega since. In the spring of 1848 I moved back to Oregon City. Ortega had gone.

Ques. 10. Did Ortega state to you the extent of his land claim?

Ans 10 If he did, I don't remember it now.

Z. P. SWEET.

Subscribed and sworn to before me this 16th day of August, A. D. 1861.

[SEAL.] CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of James Miller, claimant's witness.

In the district court of the United States for the northern district of California.

THE UNITED STATES v. ELLEN E. WHITE, adm'x, &c. } In land cases.—Dist. court No. 346.—Land com. No. 558.

Be it remembered, that on this 24 day of July, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAl-
273 lister, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared James Miller, a witness, produced in behalf of the claimant in the above-entitled cause now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp and J. J. Williams, for the United States; Volney E. Howard, for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, and place of residence?

Ans. 1. James Miller; I am 48 years of age; I reside in Marin county.

Ques. 2. How long have you resided in California?

Ans. 2. I have resided in Marin county, California, where I now reside, since 1845.

Ques. 3. Are you acquainted with Don Antonio Ortega; and if so, how long have you been acquainted with him?

Ans. 3. I am; I think I have known him since 1847 or 1848.

Ques. 4. Are you acquainted with the Rev. Father J. B. Brouillet?

274 Ans. 4. I am; I think I became acquainted with him first in 1849. I may have seen him before that.

Ques. 5. Are you acquainted with the rancho Arroyo de San Antonio?

Ans. 5. I am.

Ques. 6. Do you know anything of Antonio Ortega placing the Rev. Father Brouillet in possession of any ranch; and if so, what ranch, and at what time?

(Objected to as suggestive of the answer desired, and as being irrelevant.)

Ans. 6. Don Antonio Ortega put him in possession of the ranch San Antonio in 1849. This ranch is situated in Sonoma county on the arroyo of San Antonio, which runs between the two counties of Marin and Sonoma.

Ques. 7. State who was present when Father Brouillet was put into possession of the rancho by Ortega, and what was done.

(Question objected to as irrelevant.)

Ans. 7. I and Theodore Miranda were present. Don Antonio Ortega called me as a witness of the possession; he handed me the papers to hand over to Father Brouillet. I also cut a cross on a big rock where the possession was given; I cut it with an old axe.

Ques. 8. What papers did you hand to Father Brouillet?

Ans. 8. I suppose the papers of the ranch; I examined a part of them.

Ques. 9. Where was Theodore Miranda residing at that time?

275 Ans. 9. On the lower end of the farm—Rancho San Antonio—the same place where Mr. Gill is living now—around that spring.

Ques. 10. What did Theodore Miranda do on the occasion of this act of possession?

(Objected to as irrelevant.)

Ans. 10. He appeared to be very submissive to the old man, Ortega, because Ortega had promised him to reserve a piece of land for his (Theodore's) son, who was a godchild of his, (Ortega.) Ortega also said that he would not give that piece of land to Theodore, for if he did, Theodore would make away with it.

(Above answer objected to as irrelevant, incompetent, hearsay, and as not being responsive to the question.)

Ques. 11. Do you know for whom Theodore Miranda had been occupying that land?

Ans. 11. I do not.

Ques. 12. What did Theodore Miranda say, if anything, on that occasion in relation to the land?

(Objected to as hearsay, irrelevant, and incompetent.)

Ans. 12. He muttered something. I could not understand him. He did not seem well pleased in regard to the piece reserved for his (Theodore's) son. He said it was too small, or something of that kind.

Ques. 13. Did Theodore Miranda ask Ortega for any part of

276 the ranch on that occasion?

(Objected as leading, irrelevant, incompetent, and hearsay.)

Ans. 13. I think he did, to the best of my knowledge.

Cross-examination.—Ques. by att'y for U. S.

Ques. 14. When the said papers were delivered to you, and by you to Father Brouillet, were you on the rancho Arroyo de San Antonio; and if so, upon what part of it?

Ans. 14. At that time we were on the ranch. As near as I could judge, we were at about the centre of the ranch; there was no house near; the house was at the other end.

JAMES MILLER.

Subscribed and sworn to before me this 24th July, A. D. 1861.

CUTLER McALLISTER,

[SEAL.] *U. S. Comm'r.*

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

1665

Deposition of George Pearce, claim't's witness.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* ELLEN E. WHITE, adm'x, &c. } In land cases.—Dist. court No. 346.—Land Com. No. 558.

Be it remembered, that on this 16th day of August, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the
277 United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared George Pearce, a witness produced in behalf of claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: Wm. H. Sharp, U. S. attorney, by J. B. Williams; Volney E. Howard, for claimant.

Questions in behalf of the claimant.

Question 1st. Your name, age, and place of residence, and occupation?

Ans. 1. My name is George Pearce. I am 37 years of age. I reside in Petaluma, Sonoma county, in this State. I am attorney and counsellor-at-law.

Ques. 2. How long have you resided in Sonoma county?

Ans. 2. I have resided in said county since July, 1849. From July, 1849, when I first went there, to the fall of 1854, I resided in Sonoma city, then a year at Santa Rosa, in said county, and since that I resided in Petaluma, where I yet reside.

Ques. 3. Are you acquainted with the tract of land known as the Arroyo de San Antonio; if yea, when did you first become acquainted with it, and where is it situated?

278 Ans. 3. I am acquainted with the tract of land known as the Arroyo de San Antonio. I first became acquainted with it by character from the representations of others in the summer or fall of 1849. This tract is situated between what is called Petaluma creek and the laguna and Arroyo de San Antonio, in Sonoma county.

Ques. 4 Do you know whether there was any person who claimed to own that rancho in 1849; and if so, who was it?

(Objected to as irrelevant, because there is a legal way of ascertaining the claimants to different ranchos under the act of March 3d, 1851.)

Ans. 4. Yes; a man by the name of Ortega, who then lived in Sonoma, in 1849, claimed to own it. I don't know that I can recollect his given name.

Ques. 5. Do you know of any acts of ownership exercised by said Ortega in relation to said ranch; and if so, what?

Ans. 5. Nothing beyond his offers to sell the whole or a part of said tract.

Ques. 6. Do you know anything in relation to his having the title-papers to said rancho?

Ans. 6. He frequently in the summer and fall of 1849 applied to me to purchase said ranch or a part of it, he desiring to
279 sell it to raise some money. I remember on one occasion I expressed a desire to know what title he had; it is so long ago I hardly remember the exact conversation. The substance of it was, that I desired to know his title and see his title-papers. He brought some papers to me, which I examined; they were in Spanish; I could not read them; there being no one present who could, I looked the papers over, and then promised the old man to make some further enquiries in respect to his title. My recollection is that Ortega at that time represented to me that his rancho was in pledge to some person.

Ques. 7. Do you know what ranchos adjoined Ortega's ranch in 1849, if any?

(Objected to as irrelevant, because the question is now as to the validity of the claim, and not as to its location and survey.)

Ans. 7. I knew but two of the adjoining ranchos at that time. One of them was called the Roblar de la Miseria, the other was the Vallejo tract there; I don't know what they called it. I think it was the Petaluma grant.

Ques. 8. Who at that time was reputed to be the owner of the ranch Arroyo de San Antonio?

Ans. 8. This man Ortega was the only one reputed to be the owner of that ranch at that time; that is, he was the only one that I knew of at that time.

Ques. 9. How was the title of Ortega regarded at that time in the neighborhood?

(Objected to as irrelevant.)

280 Ans. 9. There was so little search made about Spanish titles at that time that I could hardly say. Generally, all Spanish grants were looked upon in the same light; they were regarded as equally good. I never heard any distinction made.

Cross-examination.—Ques. by U. S. att'y.

Ques. 10. In answer to question 6 you state you remember on one occasion having conversation with Ortega. State whether that conversation was in English or Spanish.

Ans. 10. It was in Spanish.

Ques. 11. Were you well acquainted with the Spanish language at that time?

Ans. 11. I was not. I conversed in broken Spanish with Californians at that time.

Ques. 12. Have you ever examined the papers filed in this case purporting to be the title-papers?

Ans. 12. I have examined them on one occasion for a few minutes, I mean since they were filed.

Ques. 13. Can you state whether they are the same papers shown to you by Ortega, as stated by you in your answer to ques. 6?

Ans. 13. I cannot. The quality of the paper and the general appearance of them are the same.

281 Ques. 14. Did you never, in 1849 or 1850, hear that a Mexican named Juan Miranda claimed the same rancho?

Ans. 14. I don't think I ever heard of his claim till about 1852. I never knew Miranda at all. I have heard him spoken of frequently.

Ques. 15. Did you make any further enquiries respecting Ortega's title, as you say in your answer to the 6th ques. you promised him to do?

Ans. 15. My recollection is that I did.

Ques. 16. State the result of your enquiry.

Ans. 16. I can only remember that I was tempted to make an investment in said ranch, but to what extent I don't recollect. This was after I made the enquiry about the title.

(Answer objected to as not responsive to the question.)

Ques. 17. Please answer the above question?

Ans. 17. I never saw the papers afterwards that I know of, unless these papers on file are the same papers, which I can't say. I enquired of men who ought know about this title. At that time I had never seen the land. He brought me his title-papers in the city of Sonoma. I think a short time after this I went on his land for the first time.

Ques. 18. Do you claim any land under the Ortega title?

282 and if so, state the extent and location of your claim.

Ans. 18. I claim three town lots at the lower end of Main street, in Petaluma. I think they are each 50 × 100 feet; there are improvements upon them, and their whole value may be $1,000.

(The foregoing deposition objected to on the ground of interest of the witness in the land claimed.)

Direct examination resumed.

Ques. 19. Are you in possession of the lots alluded to by you in your last answer.

Ans. 19. I am not in the actual occupation of them. They are enclosed, and I have the possessory title of them as well as the Ortega title. I have no tenant at the present time in the actual occupation of them. I have the control and letting of them.

GEORGE PEARCE.

Subscribed and sworn to before me this 16th day of August, A. D. 1861.

[SEAL.] CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Deposition of D. O. Shattuck, for claimants.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* ELLEN E. WHITE, adm'x, &c. } In land cases —Dist. court No. 346.— Land com. No. 558.

283 Be it remembered, that on this 19th day of September, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California, to take acknowledgements of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared D. O. Shattuck, a witness produced in behalf of claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: A. P. Crittenden, for cl'm't; Wm H. Sharp and J. J. Williams, for U. S.

Questions in behalf of the claimant.

Question 1st. Your name, age, and place of residence?

Ans. 1. D. O. Shattuck. I am over 21 years of age. I reside in Sonoma?

Ques 2. Are you acquainted with Benj S. Brooks and Thomas B. Valentine; if so, since when?

Ans. 2. I know them both, I think from about the winter of 1851.

Ques. 3. What office, if any, did you hold during the month of January, 1857?

Ans. 3. I was judge of the superior court of the city of San Francisco.

284 Ques. 4. Was there a certain cause of Benjamin S. Brooks *vs.* Nicholas Luning, tried before you in that court in the month of January, A. D. 1857?

Ans. 4. There was.

Ques. 5 What was the nature of that case?

Ans. 5. It was a suit brought by B. S Brooks *vs.* Luning, to recover an attorney's fee for his (Brooks's) professional services in prosecuting the claim of Juan Miranda to the ranch known as the Arroyo de San Antonio before the land commission. The style of the case before the land commission was Thomas B. Valentine *vs.* The United States, and Thomas B. Valentine *et al vs.* The United States. There were two petitions for the same land; the numbers of the cases before said commission were No. 45 and No. 812. One of these petitions was for a part of said rancho, and the other for the whole.

Ques. 6. Was Thomas B. Valentine sworn and examined as a witness, on the trial of that case, on behalf of the plaintiff, Brooks?

Ans. 6. He was.

Ques. 7. In the course of that examination did he make any state-

ment under oath in respect to his search for testimony to prove that a grant had been made by a Mexican governor of California to Miranda, or in respect to the fact of any such grant having ever been signed by the governor? If yes, please state what he said upon those points.

285 Ans. 7. Mr. Luning was defending that suit upon the theory that Mr. Brooks had sold him out instead of prosecuting it, and that within a month after making the agreement in regard to the fee, he (Brooks) had extinguished the Miranda claim so far as he could, and had dismissed the case before the commission. Brooks insisted that he had prosecuted the case until he had ascertained that the Miranda case was fictitious, and that no grant had ever been issued; and introduced Mr. Valentine to prove that fact. Mr. Valentine's testimony on that trial has been a subject of discussion since, and what I state in regard to it I state from memory and from my notes which I took at the time. He swore and testified as follows:

I know the def't. I am the claimant under the Miranda grant which was before the commission. Know the defendant's interest in that claim and his agreement with Brooks to prosecute it I searched everywhere for testimony after that time, and four witnesses were examined by Brooks and depositions were taken.

Brooks likewise went with me to the mission to search for evidence. The result of all the investigations was, that we ascertained the Miranda grant was never signed by the governor, and was worthless. This I ascertained from De La Rosa, who took the grant down to get it signed. Ascertaining this, we made a compromise with the Ortega grant. Mr. Brooks represented the lower half of the grant, which Luning had a mortgage on.

286 Stewart, for the Ortega grant, was willing to give part of the upper half, but said he would have nothing to do with Luning about it, and the negotiation was near broken off on that ground; Brooks refusing to negotiate, unless the lower half was considered and part of it reserved.

I talked with Mr. Luning about the compromise.

I have no interest in this suit. Think I informed Mr. Luning of the compromise at the time it was going on.

I went to him before and wished him to bear part in the expenses of taking testimony, which he declined.

Then, I think I told him of the proposals we had made to Stewart, and think he said that perhaps it was the best that could be done with it; as the Miranda grant was not good, perhaps we had better get something out of it in that way; that is, that the Miranda claimants should have part of the ranch.

Don't know that anything further was said before the agreement with Stewart was closed.

I owned the upper half of the Miranda claim, but had sold the lower half.

I, by the agreement with Stewart, was to receive the money for the Miranda claimants.

Mr. Brooks had no other interest in the lands than by his agreement with Luning.

I have received $1,000 under the contract with Stewart in Nov., '55. That arose, I think, from the sale of the upper half.

I paid Brooks his proportionate share of it. Have never
287 made him a deed for any portion of the ranch. The portion paid him was $250.

The Miranda grant was 3 leagues, the Ortega grant 4 leagues, but calling for the same boundaries.

The ¼ proceeds of my receipts in money to Brooks was intended as a substitute for the ¼ land I was to give him.

Know of no bargain of substitution between Brooks and Luning, by which Brooks was to receive part proceeds instead of this $2,000.

The four witnesses spoken of were not examined at the same time.

I had the grant before I employed Mr. Brooks, but did not know that the grant had not been signed until after he was employed.

He knew it was not signed when the contract was made by him with Luning for the fee.

Cross-examination waived.

(Counsel for the United States objects to the whole of the foregoing deposition, and to each question and answer thereof, as being irrelevant and incompetent testimony.)

This objection is considered as made at the proper time, and by consent it is placed at the end of the deposition.

D. O. SHATTUCK.

Subscribed and sworn to before me, this 19 Sept'r, A. D. 1861.

[SEAL] CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

288 *Deposition of M. G. Vallejo for claimant.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ELLEN E. WHITE, adm'x, &c. } In land cases.—Dist. Court, No. 346.—Land Com., No. 558.

Be it remembered, that on this 8th day of October, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgements of bail and affidavits, and also to take depositions of witnesses, in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared M. G. Vallejo, a witness produced in behalf of claimant in the above-entitled cause, now pend-

ing in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: A. P. Crittenden for claimant, Wm. H. Sharp, by J. J. Williams, for U. S.

Questions in behalf of the claimant.

Question 1st. Your name, age, and place of residence?

Ans. 1. M. G. Vallejo; I am over 21 years of age; I reside in Sonoma.

Ques 2. Please examine the paper now shown you marked "Doc. H. H. No. 1," an'x'd to the deposition of L. A. D. de Ortega,
289 taken before Com'r Hiland Hall." "Filed in office March 25, 1853. Geo. Fisher, sec'y," and state whether or not the signature which appears at the foot of the report dated July 30, 1840, on the 2d page of the document, is your genuine signature, and if so, state at what time you affixed that signature.

Ans. 2. That is my signature; I affixed it upon the same day upon which the report is dated.

Ques. 3. Did you at any time ever give to Juan Miranda any license or permission to occupy the rancho Arroyo de San Antonio, or any part thereof?

Ans. 3. I never did.

Ques. 4. Please examine the paper now shown you, marked Exhibit Vallejo No. 1, and state whether or not you have ever seen it before; if so, where and when did you first see it, and state what that paper is?

Ans. 4. I saw this exhibit first in 1840, and I put my signature to it at the date which it bears; it is an official examination, in the matter of one Barry, for breaking open an official letter.

Ques. 5. In whose possession did that paper remain after you affixed your signature to it?

Ans. 5. In my possession.

Ques. 6. How came it to remain in your possession?
290 Ans. 6. The matter was decided by me, and it remained amongst my official papers.

Ques. 7. Until when did it remain in your possession?

Ans. 7. Until about three weeks ago.

Ques. 8. Examine the letter now shown you, dated May 12, 1839, marked "Exhibit Vallejo No. 2," and attached to your deposition, and state, if you can, in whose handwriting it is, to whom it was addressed, and when you first saw it.

Ans. 8. I don't know the handwriting, but I think it is Sanchez Berryesa's handwriting; it was addressed to me by Bartolomo Bojorques. It reached me shortly after its date.

Ques. 9. In whose possession has this letter been from the time it came to you until within the last 3 or 4 weeks?

Ans. 9. In my possession.

Ques. 10. Do you know a rancho formerly called "Camilo?" If yes, please state where it was situated.

Ans. 10. I know a rancho with that name. It is situated between San Rafael and Sonoma.

Ques. 11. Has that rancho now any other name?

Ans. 11. In old times it was called "Olampali."

291 (It is admitted that the paper described in ques. 2d is the original espediente of Ortega, produced by R. C. Hopkins, archive clerk, from the office of the surveyor general of the U. S. for the State of California.)

(Counsel for U. S. objects to the introduction of Exhibits Vallejo Nos. 1 and 2 in evidence, and to the testimony of the witness in regard to them as being irrelevant. Second, the whole deposition is objected to as irrelevant.)

Cross-examination waived.

M. G. VALLEJO.

Subscribed and sworn to before me this 8 Oct'r, 1861.

[SEAL.] CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

292

293 *Exhibit Vallejo No* 1. *to dep. of M. G. Vallejo, for cl'm't.*

Sonoma, 1840.

Aberiguacion sumaria contra dn. Jame Beri.

JOAQUIN PINA,
Escribano el babo de aetilla.

Yo'o HIG'A
Juez fiscal de de esta coma,
el sarg'to de 1*a comp'a de S. Fran'co.*

Plaza de Sonoma.—Año de 1840.

Aberiguacion sumaria contra de Don Jaime Beri acusado de haber abierto, una carta oficial del servicio que benia á esta comand'a militar.

JOAQUIN PINA,
Escribano elcavo de artill'a permanente.

Yo'IO HIGUERA,
Juez fiscal el sargento de la comp'a
de caball'a perman'te de S. Fran'co.

Comand'a militar de Sonoma:

Marche V. inmediatam'te, al punto de S. Rafael y tomara V. una aberiguacion sumaria contra Dn. Jaime Beri acusado de aberabierto una carta oficial del serv'o dirijida a esta Comand'a en el mes p'op'o ocurrara V. al alludante de esta plasa pa. q. de orden al cabo
294 Joaquin Piña pa. q. este marche con V. serviendo de escribano en d'ha sumaria.

Dios y libertad. Sonoma, Mayo 24 de, 1840.

SALVADOR VALLEJO.

Yo'o HIGUERA,
Al sarg'to de caball'a.

El ciudadano Ygnacio Higuera, sargento de la compañia de cabelleria permanente de San Fran'co, &c.

Nombramiento de escribano.

Haviendo de nombrar escrivano segun previene nuestra nacion de los estados unidos Mejicanos, en sus ordenanzas, para que actué en la sumaria imformacion que voy á formar contra de Don Jaime Beri, acusado de haver abierto una carta oficial del servicio, dirijida a la comandancia militar de la frontera de Sonoma, nombro á Joaquin Pina, cavo de la quinta compañia de artilleria permanente, de la primera brigada de Mejico, para que exerza el empleo de escrivano, y habiendole advertido de la obligacion que contrae, acepta, jura, y promete guardar sigilo y fidelidad en quanto actue, y para que conste lo firmo con migo en la plaza de Sonoma á veinte y cinco de Mayo de mil ochocientos cuarenta.

JOAQ'N PINA.

YGN'O HIGUERA.

295 Dilige ncia de suspenderse esta ymformacion sumaria hasta pasar al pueblo de S'n Rafael a practicar las declaration de los testigos.

En la plaza de Sonoma en el mismodia, mes y año el sor juez fiscal de esta aberiguacion sumaria, mando se suspendiera hasta pasar con asistencia de mi el escrivano, al pueblo de San Rafael, para poder practicar las declaraciones de los testigos que haiga sobre el hecho á contecido de que hes acusado Don Jaime Beri, y para que conste por diligencia, le firmo dicho señor, de todo lo que doy fe.

Ante mi, JOAQ'N PINA.

YGN'O. HIGUERA.

Diligencia del oficio pasado al administrador de San Rafael pa. la cita de los test gos que deven declarar.

En el pueblo de San Rafael á los veinte y seis dias del mes de Mayo de mil ochocientos cuarenta, el sor juez fiscal de esta aberiguacion sumaria, mando se practicasen las citas de los testigos que devan declarar, y para que compareciesen á comprobarlo pasó con esta fecha al señor administrador de este pueblo el oficio qe. a la étra sigue:

"Hallandome de orden del sor. comandante militar de la plaza de Sonoma Don Salvador Vallejo formando una aberiguacion sumaria, a un vecino de este punto en que es preciso hacer constar por peritos, todas las diligencias que seban actuar; he de mere ser de V.
296 se sirva dar la correspondiente orden para que se presenten imediatamente los vecinos, Antonio Ysidoro y á Enesmergildo para tomarles el juramento de estilo.

San Rafael, veinte y seis de Mayo de mil ochocientos cuarento.

YGNACIO HIGUERA, *senor administrador de pueblo de San Rafael Don Timoteo Morfe.*"

Cuyo oficio lleve yo el imfrascripo escribano y entregué á manos del expresado administrador y para que conste por diligencia lo firmo dicho señor de todo lo que doy fe.

Ante mi, JOAQ'N PINA.

HIGUERA.

Declaracion del 1er testigo Enesmergildo.

En el mismo dia, mes, y año, el sor juez fiscal, hiso compareser ante si á el vecino Enesmergildo, primer testigo en esta aberiguacion sumaria, á quien ante mi el presente escribano hiso levantar la mano derecha y.

Preguntado: jurais á Dios, y prometeis á la nacion de los estados unidos Mejicanos, decir verdad sobre el punto de que os voy á interrogar? Dixo si juro, preguntado, su nombre, empleo, si conose á Don Jaime Beri y sabe donde se halla: Dixo, que se llama enesmergildo, de oficio labrador: que conose á Don Jaime Beri y sabe se halla en sonoma.

Preguntado, si save el motivó pr. qe Don Jaime Beri se halla
297 en Sonoma, con que fin se halla en aguel punto dixo, que piensa que Beri se halla en Sonoma por que el que declara, trujo uno carta del rancho del Sausalito que Don Guillermo Richardson le habio entregado para que la pusiera á monos del Alf'e Don Rafael Garcia, y que ci este no estaba ó lo encontraba se la diera a el que estubiese de encargado de la guardia y que como à hoido decir entre barias persones que Beri hizo muy mal de habrir la carta por no ser para el sino para el comandante Don Salvador Vallejo y que lo habian llebado á Sonoma para castigar lo, el piensa que por eso se hallara en aquel punto.

Preguntado, si cuando entrego la carta a Beri sabia que hera p'a el comand'te Don Salvador Vallejo, y si cuando la carta la entrego paso ciudad'o, de si estaba pegada con lacre, ó con hoblea ò si benia suelta; dixo que no sabe, ni le dijo Don Guillermo para quien hera la carta que puso bien ciudad'o cuando el recivio la carta, que se la habian dado pegada con lacre colorado, que no benia suelta, y que bio bien que Beri rompio la cubierta y se la puso á ler; que tambien puso ciudad'o que cuando Beri, abrio la carta, dentro de ella benia una carta grandecita, y que aluego que *que* lio la carta Beri, le dejo à el que declara vuena esta anda bete que el que declara luego se fué para sue casa.

Preguntado, si cuando el entrego la carta à Don Beri, hubo alguna hotra persona que presenciara que Beri, rompio la carta, y se
298 la habia puesto a ler; dixo que cuando el entrego la carta à Beri, lo presencio la mujer de el vecino, Guadalupe Berrellesa, que alli se hallaba, en la guardia cuando el llego; y que la citada mujer ella mismo le dijo que el Alferez Don Rafael Garcia no estaba alli, pero que se la entregara à sor Beri que éra el encargado de la guardia que no obserbo hubiera alli hotra persona que lo presenciara mas que ella.

Preguntado si cuando Beri estubo tiendo la carta obserbo alguna esprecion de las que el leia, si supo el contenido de ella; dixo que sobre la pregunta que se le hase de un todo la ignora por que Beri, usando estaba liendo la carta, la lello, quedo y no en alta voy.

Preguntado si tiene mas que añadir ò quitar sobre lo que se le tiene preguntado; dixo que no tiene que añadir ni quitar, que no sabe mas que lo que tiene declarado, y que lo dicho es la verdad a cargo del juramento hecho, en que se afirmo y ratifico, leida que le fué esta declaracion, y dijo ser de edad de veinte y seis años, y por no saber

escribir hiso la señal de la cruz; y lo firmo dicho señor con el presente escribano.

YGN'O HIGUERA.

Ante mi.

JOAQ'N PINA.

Declaracion del 2o, testigo Maria Dolores Albisa.

En el mismo dia, mes, y año, comparecio ante dicho señor y
298 el presente escrivano, Maria Dolores Albisa, á quien recivido permanento, por Dios, y à nombre de nuestra nacion de los estados unidos Mejicanos y de una señal de cruz de decir verdad en lo que se le interrogare, y habiendo lo sido sobre su nombre, empleo, y donde vive? Dixo llamarse Maria Dolores Albisa, que hes mujer del vecino Guadalupe Berrellesa, y que vive en la casa del R. P. Fray, Lorenzo Quijas.

Preguntada si conose á Don Jaime Beri, si sabe donde se halla, dixo que conose à Don Jaime Beri, y que sabe se halla en el Pueblo de Sonoma.

Preguntada, si sabe con que destino fué à Sonoma Don Jaime Beri, o si a tenido noticia de una carta que el recivio estando el de guardia, que diga menudamente cuanto sepa sobre el cuanto, Dixo que no sabe con que destino habra hido a Sonoma el sor Beri, que bio que sobre la carta que se le pregunta; la trujo el ganan Enesmergildo del rancho del sausalito, que Don Guillermo Richardson la mandaba con destino para que se la entregaran en manos del Alferez Don Rafael Garcia, que dicho Enesmergildo cuando llego con dicha carta como no encontro a Don Rafael Garcia, le entregaba a ella la carta pero ella no la quiso recivir, si no que le dijo que se la entregara a Don Jaime Beri, que hera el que estaba en cargado de la guardia, y que haci vio que se la entregaran; que Don Jaime, luego que recivio la carta la tubo en sus manos lellendo el sobre escrito, y luego la abrio y se puso
alerla, que luego que la lello, la que declara bio que Don
300 Jaime la doblo y la bolbio, a meter dentro de la cubierta.

Preguntada, si supo lo que contenia lo que benia puesto dentro de la carta, si bio que biniera despegada o serrada con lacre o oblea; dixo que no supo el contenido que traseia la carta, que obserbo, que cuando Don Jaime lello el sobre, en el estresno mismo que hizo p'a habrirla conocio benia pegada, por que bio que se rompio el papel que no supo si benia pegada con lacre o oblea.

Preguntada si habia en la guardia hotros que presenciaran cuando Don Jaime, abrio la carta y se puso a lerla; dixo que no habia alli mas que lo presenciaran que el dicho enesmergildo, y Don Jaime, que ella lo presencio todo, por motivo de estar viviendo en esos dias en la guardia.

Preguntada, si supo que destino le dio Don Jaime, despues que lello la carta, que la hizo, si se la entrego a alguna hotra persona, o si se quedo con ella dixo que no bio, que Don Jaime entregara a a ninguno la carta, que lo que bio fue que la puso de bajo de sus cobijas que las tenia puestas sobre el tablado de la guardia, y que luego vio que Don Jaime se fué para la casa de Don Timoteo Morfe, que la que

declara, interesada a saber noticias faborables por estar su espoza en Sonoma de anciliar, crellendo biniese orden para que se retirasen; le pregunto a Don Beri si habia alguna buena noticia, si no se sabia cuando se retirarican los anciliares, que el le respondio a la que declara; no escoza no se sabe nada, y que alugo se fue p'a la referida casa de Morle, que la que declara cuando llego Don Rafael Garcia,
301 entre seis y siete de la noche, enplatica que tubieron le comunico como habia llegado un correo del sausalito, y que Don Beri, habia abierto la carta, y la habia leido, pero que ella no sabia que noticias bendrian en ella, que fuera el apreguntarle si sabia alguna noticia buena que Don Rafael imediatamente se fué á ver á Don Beri, y apoco rato llegaron los dos a la guardia y la que declara obierbo que Beri fue a su tendido saco la carta y se la entrego en manos de Don Rafael Garcia, y que tambien obierbo la declaranta que cuando Don Rafael se entrego la carta Beri, Don Rafael le pregunto que como estaba aguella carta abierta, Beri le respondio que haci la habia recivido que no hena coza de importancia, que despues supo la que declara que Don Rafael Garcia, habia mandado la carta para Sonoma, a el Comandante Don Salvador Vallejo, que no tiene mas que decir, y que lo dicho esta veridad, a cargo del juramento hecho, en que se afirmo, y ratifico, leida que le fué esta declaracion, y dixo ser de edad de dies y nuebe años, y por no saver firmar hizo la señal de la cruz; y lo firmo dicho señor con el presente escribano.

Te entre erenglones, vale.

Ante mi, JOAQ'N PINA.

YGN'o HIGUERA.

Diligencia de suspenderse esta sumaria, por no hallar se, presente el 3'er testigo y de haverto lla citado.

En el pueblo de San Rafael á los veinte y seis dias del mes de Mayo de mil ochocientos cuarenta el sor juez fiscal de esta averiguacion sumaria mando se suspendiera hasta que llegara el terser testigo Don Rafael Garcia, que se halla fuera
302 de esta pueblo en su rancho, al que hoy mismo se á citado para que se presente á declarar, y para que conste por diligencia, lo firmo dicho señor y el presente escribano.

Ante mi, JOAQ'N PINA.

HIGUERA.

Diligencia de haverce presentado a declarar el 3'er testigo que se habia citado.

En el referido pueblo, á los veinte y siete dias del mismo mes y año, el sor juez fiscal, mando que imediatamente se siguiera áctuando esta sumaria y informacion, en virtud de haberse presentado á declarar el terier testigo que se hallaba ausente y para que conste por diligencia lo firmo dicho señor, de que doy fé yo el infrascripto escribano.

Ante mi, JOAQ'N PINA.

HIGUERA.

Declaracion del terier testigo Don Rafael Garcia Alf'z de la comp'a, cibica de esta front'a.

Ymediatamente en el mismo dia, mes, y año el sor juez fiscal, de esta aberiguacion sumaria, en virtud de haberse presentado, segun la cita que antecede el Alferez de la compañia cibica

de esta frontera Don Rafael Garcia, terier testigo ; á quien dicho señor juez fiscal hivo poner la mano derecha tendida sobre el puño de su espada, y.

303 Preguntado si baxo su palabra de honor promete decir verdad sobre lo que se le interrogare ; dixo. siprometo.

Preguntado su nombre y empleo : dixo. que se llama Rafael Garcia, que es Alferez de la compañia cibica en esta frontera.

Preguntado ; si conose á Don Jaime Beri, y si sabe donde se halla : dixo : que conose á Don Jaime Beri, y que sabe se halla en San Solano, por que el mismo lo despacho para Sonoma por orden del sor comandante militar Don Salvador Vallejo.

Preguntado ; si sabe con que destino lo mando llamar o se le dio esta orden para que Don Jaime Beri, fuera á Sonoma por dispocicion del sor comandante Don Salvador Vallejo : dixo : que sabe fué con destino de que declarase, el motivo por que habia tenido el atrevimento de abrir un pliégo del servicio que hiba dirijido a la comandancia militar de Sonoma y que por esta, motivo piensa se le daria la orden para que lo despachara.

Preguntado ; como sabe que, Beri halla abierto el pliego del servicio que hiba para la comandancia de Sonoma : dixo : que sabe que Beri habrio el pliego, por que casualmente el dia que lo trujo del rancho del Sausalito el gañan Enesmerjildo, este dia el que declara salio á dar un pasco hasta el rancho imediato á este pueblo ; del vecino Domingo Saenez, y Beri casualmente se hallaba de cuartel, que cuando llego el declarante entre seis y siete de la noche, tubo noticia de que en la misma tarde habia llegado un correo del sausalito, con una

304 carta, y que Beri la habica abierto, y se habia puesto alerta que luego imediatamente el que declara cuando tubo esta noticia por la mujer espoza del vecino Guadalupe Berrellesa, se fué para el cuartel para ber si Beri, le daba parte de que habia llegado dicho correo, pero Mirando, que Beri, hacia largo nato que hestaban ambos platicando y este no le daba ningun conocimiento del haber llegado el correo entomes el que declara le dijo : Don Beri ; yo sé que este tarde á llegado un correo del sausalito, y vited no me á dicho nada, donde esta la carta que vite arrecivido, entomes Beri, le respondio, si aqui la tongo, y se fué para el tablado que esta en la guardia, y debajo de el tendido de sus cobijas saco la carta y se la entrego á el que declara diciendole ; áqui esta, no es cosa que importa, entonses reciviendola en sus manos el que declara, obierbo que la carta estaba abierta y conocio ser cierto lo que le habian dicho, de que Beri la habia abierto, y la habia leido ; que luego imediatamente, el que declara le dijo, Don Beri, como esta esto ; esta carta del servicio esta abierta, quien la abrio, Beri le respondio que haci se la habian entregado ; luego, mando el que declara que biniera el gañan Enesmerjildo y examinandolo vien, de que como habia traido áquel pliego abierto, á esto respondio enesmergildo que el no habia traido abierto el pliego que el lo habia entregado serrado pero que Don Beri, delante del, y de la esposa de Berrellesa lo habia abierto, y se habia puesto alerlo y q. bien

305 sabia el alcalde Antonio Ysidoro que el habia entregado el pliego serrado entonses el que declara le dijo á Beri, bueno ; usted dise que receivio abierto este pliego, yo haci lo boy á mandar,

con que atengase usted á las resultas, que Beri, no respondio nada, entonses por escudriñar mas el asunto, el que declara mando llamar á el referido alcalde Antonio Ysidoro, y le pregunto el que declara si el habia bisto que la carta antes que Beri, la recibiera si benia serrado, o abierta, el alcalde le respondio, que el habia bisto que estaba serrada por que casualmente selabio en las manos á Enesmergildo al tiempo de hir la á entregar, que luego el que declara le mando á este mismo alcalde que le aprontase enquella misma hara un baquero para que condujiera la carta hasta Nompali, y de halli, el dueño del rancho Camilo la conduciria hasta Sonoma, y que habiendo estado lla listo para marcharse el baquero con el correo el que declara entrego la carta á manos de alcalde, y este le dijo, señor esta carta ba abierta, haci la lleban, entoses el que de lara le dijo, hombre, haci dise Don Beri que la reis vio haci llebanla.

Preguntado, si amas de la informacion que tomo por Enesmergildo, el alcade Antonio Ysidoro, y la espoza del vecino, Guadalupe Berrellesa, hiro alguna hotra, para sersoriase bien de todo el echo. Dixo, que amas de la aberiguacion que hiro, ése mismo dia con Esmergildo, el alcalde y con la espoza de Berrelleza, á hotro dia por casualidad bio que llego Don Guillermo Richardson, que fue el que habia mandado el correo del pliego desde su rancho del Sausalito, y á este sor le pregunto el que declara, Sor Don Guillermo, aller tarde llego á qué un correo con un pliego del servicio que se dirijia a la comandancia militar de Sonoma, y este lo recivio Don Jaime Beri y cuando á mi me lo entrego me lo dio con el sobre abierto vested lo mando haci entonses Don Guillermo le respondio á el que declara, que no la habia el mandado abierta y mucho menos siendo asunto del servicio, que no tiene mas que añadir, y que lo dicho és la verdad a cargó de la palabra de honor que tiene dada en que se afirmo, y ratificio leida que le fué esta declaracion, y dijó ser de edad de quarenta y seis años, y lo firmó, con dicho señor, y el presente escrivano.

306

Y'N'O HIGUERA.
RAFAEL GARCIA.

Ante mi,

JOAQ'N PINA.

Declaracion del cuarto test'go Antonio Ysidoro.

En dicho dia, mes y año, el sõr juez fiscal en esta sumaria informacion hizo compareser ante si á el alcalde de este pueblo, Antonio Ysidoro, cuarto testigo, a quien ante mi el presente escribano hiro lebantar la mano derecha, y.

Preguntado, jurais á Dios, y prometeis á la nacion de los estados unidos Mejicanos, decir verdad sovre el punto de que ós voyá interrogar? Dixo, si juro.

Preguntado, su nombre empleo, y si conose á Don Jaime Beri, y sabe donde se halla. Dixo que sé llama Antonio Ysidoro, que és alcalde de este pueblo de San Rafael y que conose a Don Jaime Beri, y sabe que halla en en el pueblo de Sonoma.

307

Preguntado, si sabe por que se halla Don Jaime Beri en Sonoma, ó con que objeto á hido. Dixo, que sabe que Don Jaime se halla en Sonoma, y fué con el objecto á hido. Dixo que sabe que Don Jaime se halla en Sonoma, y fué con el objecto, de decir como habia recivido

una carta que le entrego el gañan Enesmergildo, si abierto como se la entrego á Don Rafael Garcia, o serrada como el que declara la hari visto que la habian traido.

Preguntado, como fué cuando vio la carta serrada, á que hora, y como sabe que Don Jaime se la entrego á Don Rafael Garcia abierta. Dixo, que cuando el vio la carta serrada fue cuando Enesmergildo llego con ella del rancho del Sausalito preguntandole á el que declara que á donde se hallaba el Alferez Don Rafael Garcia, que á esto le respondio el que declara que se habia hido á cabello p'a la cañada de Herrera quisas á pasear y que entonses Enesmergildo que traiba la carta en la mano le pregunto á el declarante, pues á quien le entregare yo esta carta; el le respondio que fuera á la guardia y la entregare á Señor Beri, que le parecia el estaria alli cuidando, y que en este intermedio bien bio que dicha carta estaba serrada, que entonses Enesmergildo se fue para la guardia, y el que declara se fue para sus queaseres que tenia a que atender, que como á la oracion de la noche bio el que declara que Don Rafael Garcia, lla habia llegado, y fue y le dio parte como habia llegado un correo del rancho del Sausalito, y que a Don Beri se lo habian entregado, que entonses, Don Rafael, en compania del que declara se dirigieron para la guardia y el que declara, obserbo que Don Rafael Garcia le pregunto a Don Beri, que á donde estaba el correo, y Beri, respondio paseandose hay lo
308 tengo, no hes cosa interesante no compone cosa, y que entonses bio el que declara que Beri, se entro para la guardia y saco la carta, y se la dio a Don Rafael Garcia, pero tambien obserbo el que declara que luego le pregunto Don Rafael Garcia, a Beri, que como estaba á quella carta abierta, y Beri, le respondio que haci la habia recivido, entonses Don Rafael Garcia, le mando á el que declara que le aprontara imediatamente un baquero para que condujiera á quella carta hasta el rancho de Nompali, que luego al istante fué el que declara y nombro á el baquero, Marianito, á el que se le entrego la carta para que la llebara hasta Nompali y de halli, el dueño del ranch Camilo la conduciria hasta Sonoma, pero el que declara bio que le entregaban la carta abierta, y le dijo á Don Rafael Garcia, señor esta carta esta abierta, haci bá, entonses Don Rafael le respondio delante de Don Beri, llebenla haci, Don Beri, dice que haci la recibio llebenla, vale que el se atendra á las resultas que haiga, que no tiene mas que añadir, y que lo dicho hes la verdad á cargo del juramento que tiene hecho, en que se afirmo, y ratifico leida que le fué esta declaracion, dixo ser de edad, de cuarenta años, y por no saber firmar hizo la señal de una cruz, y lo firmo dicho señor con el presente escribano.

YGN'O HIGUERA. +

Ante mi,

JOAQ'N PINA.

La plaza tachado no vale. Diligencia de haberse citado al quinto testigo Marinito, que se halla ausente de este pueblo.

En el pueblo de San Rafael á los veinte y siete dias des mes de mallo de mil ochocientos cuarenta el señor juez fiscal de esta averiguacion sumaria mando se suspendiera hasta
309 inter cumpareciese el quinto testigo, Marinito, baquera de esta

pueblo, que se halla en el rancho de los tamales, y hoy mismo se ha mandado citar, y para que conste por diligencia, lo firmo dicho señor, de que doy fé yo el imfrascripto escribano.

Ante mi,

JOAQ'N PINA.

HIGUERA.

En el pueblo de San Rafael a los veinte y ocho dias del mes de Mayó de mil ochocientos cuarenta en vista de haberse presentado el quinto testigo que se hallaba áusente segun consta en la diligencia anterior, mando el sor juez fiscal se continuase actuando en esta sumaria y informacion y para que conste por diligencia, lo firmó dicho señor, de que doy fé y el imfraescripto escrivano.

Ante mi,

JOAQ'N PINA.

HIGUERA.

Declaracion del quinto testigo Margnito.

En dicho dia, mes, y año el referido señor juez fiscal hizo compareser ante si á el baquero Margnito quinto testigo en esta aberiguacion sumaria, á quien ante mi el presente escribano hizo lebantar la mano derecha, y.

Preguntado: Jurais á Dios y prometeis á la nacion de los estados unidos Mejicanos, decir verdad sobre el punto de que ós voy, á interrogar? Dixo: si juro.

Preguntado su nombre, empleo, y si conose á Don Jaime Beri, y si sabe donde se halla: Dixo, que si llama Marino, que hes baquero del pueblo de San Rafael que conose á Don Jaime Beri, y que sabe que se halla en San Solano.

Preguntado si sabe con que objeto se halla en San Solano Don Jaime Beri, ó si tiene noticia de ello que cuente menudamente cuanto sepa sobre el asunto: dijo. que sabe por Anto. Ysidoro el alcalde
310 q. á Don Beri la habian llamado á San Solano para aberiguar por que motivo habia habierto una carta que recivio Beri en la guardia, y que hes cuanto sabe sobre la pregunta que se le hase. Preguntado; si sabe quien fué el que conduciò la carta para Sonoma, la que dise que supo que Don Jaime Beri habia abierto en la guardia: Dixo. que el mismo la llevo hasta el rancho de Nompali, que halli se la entrego á Camilo, dueño de á quel rancho.

Preguntado si cuando recivio la carta bio que hiva á bierto ó serrado, y quien fué el que se la dio para que la llebara hasta Nompali; y apresencia de quienes la recivio; Dixo. que cuando recivio la carta se la entregaron abierta, que no lo presencio mas que el alcalde, Antonio Ysidoro, que fué el que se la entrego, y que no tiene mas que añadir, y que lo dicho es la verdad á cargo del juramento echo, en que se afirmó y ratificio leida que le fué esta declaracion, y dixo ser de edad de veinte años; y por no saver firmar hizo la señal de la cruz y lo firmo dicho señor con el presente escribano.

Ante mi,

JOAQ'N PINA.

YGN'o HIGUERA.

Diligencia de suspenderse esta Sumaria, hasta pasar á la plaza de Sonoma en donde se halla el acuado.

Ymediatamente en el mismo dia y año el juez fiscal de esta sumaria y informacion, en vista de hallarse concludas las declaraciones de los cinco testigos que anteseden mando se suspendieran estos autos, hasta bolberlos á continuar, á la plaza de Sonoma, en donde se halla arrestado el asuado Don Jaime Beri, y para que conste por diligencia, lo firmó, dicho sor. de
311 que yó el imfrascripto escribano doy fé.

Ante mi,

JOAQ'N PINA.

HIGUERA.

En la plaza de Sonoma á los veinte y nuebe dias del mes de Mayo de mil ochocientos cuarenta, el sor. juez fiscal de esta sumaria informacion, en birtud de haber llegado de pueblo de San Rafael, en donde se conclulleron las declaraciones de los testigos que anteseden; mando imediatamente en este dia que se siguiera actuando, hasta tomarle la comfecion del acusado Don Jaime Beri el que se halla arrestado en este pueblo, por dispocicion del sor. comandante militar, Don Salvador Vallejo, y para que conste por diligencia, lo firmo dicho señor de que yo el imfrascripto escrivano doy fé.

Ante mi,

JOAQ'N PINA.

YGN'O HIGUERA.

Comfecion del acusado Don Jaime Beri.

Ymediatamente dicho señor juez fiscal, hizo compareser anticy á Don Jaime Beri, y habiendose echo lebantar la mano derecha, y preguntado; jurais á Dios á la nacion de los estados unidos Mejicanos, decir verdad sobre el punto de que os voy á interrogar? Dixo: si juro, y responde preguntado su nombre, edad, patria, religion, y empleo. Dizo: que se llama Jaime Ricardo Beri, de edad de cuarenta años, que su patria hes en Yrlanda, perteneciente al Rey de gran Bretana, que és A. R. y que hes de oficio labrador, y responde.

Preguntado: si sabe la cauza que haiga havido para que lo
312 haigan citado que se presente á esta comandancia militar.

Dixo: que lo ignora y responde.

Preguntado si sabe o tiene noticia de una carta que benia dirijida para la comandancia militar, cuando el se hallaba dando el servicio de anciliar en el pueblo de San Rafael, y que cuente menudamente cuanto sepa sobre el asunto. Dixo: que sobre lo que se le pregunta, el recivio la carta por mano de un Indio que la trujo del rancho del Sausalito, que esta llego á la guardia; y preguntandole á el que declara le dijo que fuese y se la entregara al administrador, o á Garcia que hera el encargado, que el Yndio se la dejo alli y el que declara vio que llevabauna cubierta de papel impreso, que el que declara desembolbio aquella cubierta y bio que la carta que benia dentro se dirijia pa. San Solano cojio el que declara dejo alli sobre el tendido de su cama que estaba en la guardia la carta, y se fué para la casa del administrador á quien la prejunto si habia quien biniese pa. Sonoma, por que alli habia llegado una carta que se dirijia para la comand'a de Sonoma, que el administrador le respondio, que no habia quien

fuese para Sonoma; que el que declara se quedo alli con el administrador combersando, hasta que como á las ciete de la noche que llego Garcia á la guardia, luego que se apio del caballo, el que declara le dio parte de como halli tenia una carta que hiba dirijida pa. Sonoma, la que se la entrego en sus mismas manos de garcia, que á lugo de de haber entregado la carta, como coza de media hora Garcia le preguntó á el que declara si habian llegado hotras cartas amas de aquella sola le habia dejado el indio, y que conforme se la habia dejado
313 haci mismo, sola la entregaba, y responde.

Recombenido como dise que no puso cuidado de si benia serrada la carta, que secivio, cuando consta por declaraciones de testigos, aun del mismo encargado Rafael Gárchia; de este haberle recombenido que cono estaba abierta aquella carta, y que si haci la havia recivido, y que entonses le habia adbertido Gárcia que se atubiese a las resultas, y consta que respondio tambien, que no hera cosa de importancia, que haci la habia recivido, haci la entregaba; consta que delante de la mujer de Guadalupe Berrelleza, se puso á ler, la carta y delante del Yndio que se la entrego; consta que lo bieron romper la cubierta que benia pegada con lacre; Dixo: que el no puso cuidado si estraba abierta ó serrada, que de lo unico que el se hiro cargo fué en ber el sobrescrito para donde se dirijia, que sobre la recombencion que dise que Garcia le hiro de que si haci habia recivido la carta abierta; no á habido tal recombencion por que el que declara, no supo de la noticia de estar abierta la carta, hasta el lunes, procimo pasado, que el capitan Don Salvador Vallejo le dijo, si sabia con que fin habia cido llamado; que el que declara, le respondio que lo ignoraba, que entonses Don Salvador le dijó á el que declara, yó emandado llamar á V. con fin de aberiguar como á abierto v'sted una carta que Richason me mandaba del sausalito, en que me daba noticia de que benia una lancha &c, esto Garcia me á dado parte; que á esto el que declara le respondio á Don Salvador, que el no habia leido mas que el sobreserito, que nobio si benia, ono pejada la carta, que no sabia si en la guardia la despegarian, o si entre los borrachos que binieron del fandango que hacia dos dias que se estaban dibirtiendo en el rancho de las Calabaras, alguno destos la despegaria, ó no; que sobre el cargo
314 que delante de la mujer, y el Indio compio la cubierta, y se puso a ler la carta, esto dise que todo hes nulo, que cy el sobrescrito lo lio pero no se hizo cargo del contenido de ella y responde.

Preguntado, si sabe la pena que tiene á cualesquier que comete un delito en abrir, correspondiencias del servicio o particulares: Dixo; que ignora en un todo la prejunta que se le hase, y responde.

Preguntado, si sobre lo que se le tiene preguntado tiene mas que añadir, o'quitar: Dixo. que no tiene que añadir mas, que decir, que en un todo bive ignorante de lo que se le acusa, y que lo dicho és la verdad a cargo del juramento que tiene écho, en que se afirmo y ratifico, leida que le fué esta confecion, y lo firmo con dicho señor y el presente escribana.

JAIME R'DO BERRY.

YGN'O HIGUERA.

Ante mi,

JOAQ'N PINA.

1683

Conclucion fiscal. El ciudadano Ygnacio Higuera, juez fiscal en esta aberiguacion sumaria; vistas las declaraciones, y cargos que se le han hecho a Don Jaime Beri, acusado de haver abierto (en la guardia del pueblo de San Rafael) una carta oficial del servicio derijida á esta comandancia en el mes procimo pasado, y este hallarse en un to do negativo, á pesar de haver dos testigos presenciales que lo vieron romper la cubierta del oficio, poner sel á ler, y de hay guardarlo y amas consta por el terser testigo que hasta que este no le recombino por dicho oficio no hubo de entregarlo, á pesar de que Beri se niega en un todo de esta recombencion.

Mas consta por testimonio del oficio que original se inserta
315 en esta misma foja. Buelta como el oficio vino serrado con lacre.

Son muchos los motivos á que por esto se haga Beri hechor del delito que se le acusa por to do lo cual concluyo á nombre de la nacion Mejicana à que Don Jaime Beri sufra una multa de cien pesos, y espulsarlo del territorio; tanto por el enorme delito que á cometido, cuanto por ser estranfero sospechoso por esta sumarir y nada combiniente al actual estado del departamento.

La comandancia general sobre todo, resolbera lo que por ordenanza combenga á esta delito. Sonoma, Mayo veinte y nuebe de mil ochocientos cuarenta.

YGN'O HIGUERA.

En el mismo dia, mes, y año el sor juez fiscal, en vista de estar concluidas las declaraciones, y confecion del acusado en esta sumaria, paso acompañado de mi el escribano á la casa del sor comandante militar, Don Salvador Vallejo, á entregar estos autos, compuestos de dose ojas utiles, dos oficios, y la cubierta con una oja blanca, y de haverse aci executado lo firmo dicho señor de que doy fe.

YGN'O HIGUERA.

Ante mi,

JOAQ'N PINA.

Copitania del Puerto de San Franc'o.

El oficio q. maude al sor comand militar de Sonoma fue bien
316 serrada con lacre lo q. digo a V. bajo me halabra de onor como me hide V. en su oficio con f'ha 26 del presente mes lo q. contesta.

Dios y Liberdad, San Fran'co 28 de Mayo de 1840.

GUILLO RICHARDSON.

Al Co Sarg't Y gnacio Higuera de la compania de cabellera en Sonoma.

SONOMA, *Junio 4 de* 1840.

Sòr comandante militar:

Aunque en estas averiguaciones se prueba suficientemente la apertura del plievo que se dirijia a la coma. militar de esta frontera pr. la capa del puerto de S. Francisco, perpetrado por D. Jayme Berry, teniendo en considerasion la opinion vertida por el fiscal y los demas adminiculos que constituyen el sumo. y el tiempo que lleba preso d'ho

Berry, puede ademas aplicasuale una multa de cuarenta pesos a monestandose seriam'te de contenerse en los limites del deber sopena de aplicasule el rigor de las leyes. Esta es mi opinion adecuada a la actual causa: En cuya virtud se pondre en libertad al individuo citado, asibian la cantidad que repite este decreto.

Estos autos se debolveran pa. archivarlos.

M. G. VALLEJO.

SONOMA, *Junio* 4 *de* 1840.

Se compli'a con el presente decreto en esta aberiguacion sumaria; ebacuado pr. la comand'a general.

Se deboliberon estos autos con f'ha de hoy pa. archibarse como se ordena.

SALVADOR VALLEJO.

317 *Translation of Exhibit Vallejo No.* 1.—*Sonoma*, 1840.

Proceeding against James Berry.

PLAZA OF SONOMA, year 1840.

Proceedings against James Berry, accused of having opened an official letter directed to this military comandancia.

Judge fiscal sergeant of the permanent company of cavalry of San Francisco.

YGN'IO HIGUERA.

Clerk, the corporal of permanent artillery.

JOAQUIN PINA.

MILITARY COMANDANCIA OF SONOMA: You are hereby ordered to go directly to San Rafael and commence summary proceedings against James Berry, accused of opening an official letter of the service directed during the last month to this comandancia. You will apply to the military commander of this place, who will give an order to Corporal Joaquin Pina, who will act as clerk in the matter.

God and liberty.

Sonoma, May 24, 1840.

SALVADOR VALLEJO.

318 *Appointment of Escribaño.*

To Sergeant Ygnacio Higuera:

Citizen Ygnacia Higuera, sergeant of the company of permanent cavalry of San Francisco.

It being necessary to appoint a escribaño as required by the laws of the United States of Mexico, to act in the summary proceedings to be formed against James Berry, accused of having opened an official letter of the service directed to the military comandante of the frontier of Sonoma, Joaquin Pina, corporal of the fifth company of per-

manent artillery of the first brigade of Mexico, has been appointed to exercise the duties of escribaño. Having explained to him his obligations in the matter, he has accepted of the appointment, and promised to observe strict fidelity in these proceedings. In witness whereof, he signed with me, in the plaza of Sonoma, 25th of May, 1840.

YGNACIO HIGUERA.
JOAQUIN PINA.

319 *Order suspending these proceedings for the purpose of going to the pueblo of San Rafael to take testimony of witnesses.*

Plaza of Sonoma, same day, month, and year, the señor judge fiscal in these proceedings ordered the same to be suspended for the purpose of going to San Rafael to take the testimony of witnesses in relation to the matter.

In witness whereof, said gentlemen signed, which I attest.

YGNACIO HIGUERA.

Before me. JOAQUIN PINA.

Order of the administrator of San Rafael to summon witnesses.

In the pueblo of San Rafael on the 26th of May, 1840 the judge fiscal of these proceedings ordered citations to be issued to the witnesses who were to testify in the matter, and in order that they should appear, the following official communication was directed to the administrator of this pueblo: "Having, by the order of the military comandante of the plaza of Sonoma, Don Salvador Vallejo, instituted proceedings against a resident of this place, in which it is necessary to cause to appear (by peritos) all the proceedings to be taken," I have to ask you to give the necessary orders for the
320 immediate appearance Antonio Ysidoro and Enesmergildo, in order that they may take the necessary oath.

SAN RAFAEL, *May* 26, 1840.

Ygnacio Higuera, administrador of the pueblo of San Rafael.

TIMOTHY MURPHY.

Which letter I, the undersigned escribaño, delivered to the said administrador. In witness whereof, the said gentleman signed, which I attest.

HIGUERO.

Before me. JOAQUIN PINA.

Testimony of 1st witness, Enesmergildo.

On the same day, month, and year, the judge fiscal caused to appear before him citizen Enesmergildo, the first witness in these proceedings, whom I caused to hold up his right hand, and asked him the following question:

Question. Do you swear by God, and promise the nation of the

United States of Mexico, to speak the truth in relation to the matters in relation to which you may be questioned? He said, I swear.

Question. Your name and employment. If you are acquainted with James Berry, and know where he is to be found.

321 He answered, he was called Enesmergildo; that he was a laborer; that he knows James Berry; that he is to be found in Sonoma.

Question. If he knows what business James Berry has in Sonoma, and for what purpose he went there. He answered that he thinks James Berry is in Sonoma, because he, the witness, carried a letter from the ranch of Saucelito, which Don Guillermo Richardson had delivered him to place in the hands of Don Rafael Garcia, and if he should not be there, he should deliver to the one in charge of the guard, and that he had heard various persons say that Berry had acted badly in opening a letter that was not for him, but for the comandante, Don Salvador Vallejo, and that they had carried him to Sonoma to punish him. He therefore thinks that he is in that place.

Question. If, when he delivered the letter to Berry, he knew it was for the comandante, Don Salvador Vallejo, and if, when he delivered the same, he took care to observe if it was sealed with wax or wafer, or if it was open. He replied that he did not know, nor did Don

322 Guillermo tell him for whom the letter was; that he took care to observe that the letter was sealed with red wax; that it was not open; that he saw Berry open the letter and read the same, and that he also observed that when Berry opened the letter it contained another; that after Berry had read the letter, Berry said to the deponent, "Very well;" that then the deponent went to his house.

Question. If, when he delivered the letter to Berry, there was any other person present who saw Berry open the letter and read the same. He replied that when he delivered the letter to Berry the wife of Guadalupe Berryesa was present, and that the said wife herself told him that Don Rafael Garcia was not there, but that he should deliver it to Mr. Berry, who was in charge of the guard; that he did not observe that any other person was present besides her.

Question. If, when Berry was reading the letter, he observed any expression in relation to what he was reading, and if he knew the contents of the same. He replied that he was altogether ignorant in relation to the matter, since Berry did not read the letter aloud.

Question. If he had anything more to say in relation to the

323 matter. He replied that he had nothing to add; that he knew no more than what he had stated, which he affirmed and ratified after the same had been read to him; that he was 26 years of age, and not knowing how to write, he made the sign of the cross, the said judge signing with the present escribano.

+

YGNACIO HIGUERA.

Before me.

JOAQUIN PINA.

Testimony of second witness, Maria Dolores Alvisu.

The same day, and month, and year, appeared before the said judge and the escribano, Maria Dolores Alvisu, who made oath, by God, and in the name of our nation of United States of Mexico, and by the sign of the cross, to speak the truth in reply to the questions which might be asked her, and having been asked as to her name, calling, and residence, she replied that her name was Maria Dolores Alvisu; that she was the wife of Guadalupe Berryesa; and that she lived in the house of Friar Lorenzo Quijos.

Question. If she was acquainted with James Berry, and knew where he was to be found. She replied that she was acquainted
324 with James Berry, and knew that he was to be found in Sonoma.

Question. If she knew for what purpose Berry went to Sonoma; if she knew anything of a letter that he received when he was on guard; if so, that she should state all that she knew about it.

She replied that she did not know for what purpose Berry had gone to Sonoma; that in relation to the letter about which she was asked, which was brought from the ranch of Saucelito by Enesmergildo, who was ordered to deliver it to Rafael Garcia, that said Enesmergildo, when he arrived with said letter, not finding Don Rafael Garcia, wanted to deliver it to her, but that she did not desire to receive it; that he should give it to James Berry; that he was the one in charge of the guard; that she saw him give it to Berry; that when Berry received the letter he took it in his hands and read the superscription, and then he opened and commenced reading, and after he had read, the deponent saw him fold it up and put it again in the envelope.

Question. If she knew the contents of the letter. If she observed whether it was sealed with wax or wafer.

325 She replied that she did not know the contents of the letter; that when Berry read the direction she knew that it was sealed, because she saw him open it; but she did not know whether it was sealed with wax or wafer.

Question. If there were any other persons present when Berry opened the letter, and read the same.

She replied that there was no one present save Enesmergildo and Berry; that she saw the whole of it, because she was at that time living within the guard.

Question If she knew what Berry did after he read the letter; if he delivered it to any other person or kept it himself.

She replied, that she did not see Berry deliver the letter to any one; that she saw that he placed it under the cover of the guard table, and that then she saw that Berry went to the house of Timothy Murphy; that deponent being interested in hearing from her husband in Sonoma, who belonged to the auxilleries, and believing that this might be an order for them to leave, she asked Berry if he had any good news, and if he knew when the auxilleries would leave, to which he re-
326 plied that he did not know anything about it. Then he went to the house of said Murphy. That when Rafael Garcia

arrived, between six and seven o'clock in the evening, in conversation with him she told him that an express had arrived from Saucelito; that Berry had opened the letter and had read it, but that she did not know the contents of the same, whereupon he went immediately to see Berry, and a little while afterwards the two returned to the guard, and she observed that Berry delivered the letter to Garcia, and she also observed that when Don Rafael delivered the letter to Berry he asked Berry how it came to be opened, and Berry answered that he received it thus, and that it was a matter of no importance; that she knew afterwards Don Rafael sent the letter to the comandante, Don Salvador Vallejo; that she had nothing more to say; that what she had said was the truth under the oath which she had made; that she affirmed and ratified after the same was read to her; that she was nineteen years of age, and not knowing how to write, that she made the sign of the cross. Signed by said judge and the escribaño.

+
YGNA'C'O HIGUERA.

Before me.

JOAQUIN PINA.

327 *Order suspending the proceedings on account of the absence of the 3d witness who had been summoned.*

In the pueblo of San Rafael, on the 26th day of May, 1840, the judge fiscal ordered the same to be suspended until the arrival of the third witness, Don Rafael Garcia, who is not in this pueblo, but on his rancho, and who has been summoned to testify.

In witness whereof, the same is signed by the judge and escribano.

YGN'C'O HIGUERA.

Before me.

JOAQUIN PINA.

Continuation of the examination.

In the same pueblo, on the 27th day of the same month and year, the said judge fiscal ordered that the third witness having appeared, that examination should proceed. In witness, he signed, which I, the undersigned escribano, attest.

YGN'C'O HIGTERA.

Before me.

JOAQUIN PINA.

Declaration of 3d witness, Rafael Garcia.

Whereupon, on the same day, month, and year, the judge fiscal of this examination, in virtue of the third witness, Don Rafael Garcia, having presented himself, whom the said judge fiscal caused to place his right hand upon the hilt of his sword, and asked him if,
328 under his word of honor, he promised to answer truly such questions as might be asked him; he replied that he promised.

Question. His name and employment. He replied his name was Rafael Garcia; that he was ensign of the civic company of this

frontier.

Question. If he knew James Berry, and if he knew where he was to be found. He said he was acquainted with James Berry, and knew that he was in San Solaño, because he himself had sent him to Sonoma by order of the military comandante, Don Salvador Vallejo.

Question. If he knew why he had been ordered there, or if he gave him the order because the comandante, Valejo, had ordered him. He replied that he knew that he went to declare why he had dared to open a letter which had been directed to the military service of Sonoma, and that he supposed that this was the reason why he had received an order to send him.

Question. How he knew that Berry had opened the letter that was directed to the comandante of Sonoma. He replied he knew
329 that Berry had opened the letter. because, on the day that the letter was brought by Enesmergildo he happened to be taking a walk as far as the rancho of Domingo Sands, where he accidentally met Berry, and where he arrived about six or seven in the evening. He learned that an express had arrived from Saucelito with a letter, and that Berry had opened and read the same; and as soon as he had learned these facts from the wife of Guadalupe Berryesa, he went to see if Berry had given information of the express, but observing, after conversing a considerable time, that Berry made no mention of the arrival of said express, when the deponent said to him: "Don Berry, I know that this evening an express has arrived from Sancelito, that you have told me nothing about it; where is the letter that was brought?" Whereupon Berry answered, "Yes; I have it here;" when he went and got it, and delivered it to the deponent, saying, "Here it is; it is a matter of no importance." Whereupon the deponent received the same, observing that the letter was opened, and he knew that Berry had opened it and read the same. Whereupon
330 the deponent said to him, "Don Berry, how is this? This is a letter of the service, and it has been opened. Who has opened it?" Whereupon Berry responded that he had received it thus, and then deponent directed Enesmergildo to be called, examining him carefully as to how he came to bring the letter open. Whereupon Enesmergildo replied that he had not brought the letter open, but that it was sealed when he delivered it; but that Don Berry, before him and the wife of Berryesa, had opened and read the same, and that the alcalde, Antonio Ysidoro, knew very well that the letter was sealed when he delivered it. Whereupon the deponent said to Berry: "Well, you say that you received this letter open. I am going to send it as it is; you can take the consequences." Berry to this made no reply. Whereupon, to make the matter more clear, I ordered the alcalde, Ysidoro, to be called, and asked him whether or not the letter was open when he received it. The alcalde answered that he
331 knew that the letter was sealed, because he had accidently seen it in the hands of Enesmergildo when he was going to deliver it; and thereupon the deponent ordered the said alcalde to call a vaquero, to carry the letter as far as "Nompali," and from that place the owner of the rancho Camilo should carry it as far as Sonoma, and that, the vaquero being ready to start, the deponent delivered the letter to the alcalde, and he, the alcalde, said to him, "Sir, this

arrived, between six and seven o'clock in the evening, in conversation with him she told him that an express had arrived from Saucelito; that Berry had opened the letter and had read it, but that she did not know the contents of the same, whereupon he went immediately to see Berry, and a little while afterwards the two returned to the guard, and she observed that Berry delivered the letter to Garcia, and she also observed that when Don Rafael delivered the letter to Berry he asked Berry how it came to be opened, and Berry answered that he received it thus, and that it was a matter of no importance; that she knew afterwards Don Rafael sent the letter to the comandante, Don Salvador Vallejo; that she had nothing more to say; that what she had said was the truth under the oath which she had made; that she affirmed and ratified after the same was read to her; that she was nineteen years of age, and not knowing how to write, that she made the sign of the cross. Signed by said judge and the escribaño.

+
YGNA'C'O HIGUERA.

Before me.

JOAQUIN PINA.

327 *Order suspending the proceedings on account of the absence of the 3d witness who had been summoned.*

In the pueblo of San Rafael, on the 26th day of May, 1840, the judge fiscal ordered the same to be suspended until the arrival of the third witness, Don Rafael Garcia, who is not in this pueblo, but on his rancho, and who has been summoned to testify.

In witness whereof, the same is signed by the judge and escribano.

YGN'C'O HIGUERA.

Before me.

JOAQUIN PINA.

Continuation of the examination.

In the same pueblo, on the 27th day of the same month and year, the said judge fiscal ordered that the third witness having appeared, that examination should proceed. In witness, he signed, which I, the undersigned escribano, attest.

YGN'C'O HIGTERA.

Before me.

JOAQUIN PINA.

Declaration of 3d witness, Rafael Garcia.

Whereupon, on the same day, month, and year, the judge fiscal of this examination, in virtue of the third witness, Don Rafael Garcia, having presented himself, whom the said judge fiscal caused to place his right hand upon the hilt of his sword, and asked him if,
328 under his word of honor, he promised to answer truly such questions as might be asked him; he replied that he promised.

Question. His name and employment. He replied his name was Rafael Garcia; that he was ensign of the civic company of this

frontier.

Question. If he knew James Berry, and if he knew where he was to be found. He said he was acquainted with James Berry, and knew that he was in San Solaño, because he himself had sent him to Sonoma by order of the military comandante, Don Salvador Vallejo.

Question. If he knew why he had been ordered there, or if he gave him the order because the comandante, Valejo, had ordered him. He replied that he knew that he went to declare why he had dared to open a letter which had been directed to the military service of Sonoma, and that he supposed that this was the reason why he had received an order to send him.

Question. How he knew that Berry had opened the letter that was directed to the comandante of Sonoma. He replied he knew
329 that Berry had opened the letter. because, on the day that the letter was brought by Enesmergildo he happened to be taking a walk as far as the rancho of Domingo Sands, where he accidentally met Berry, and where he arrived about six or seven in the evening. He learned that an express had arrived from Saucelito with a letter, and that Berry had opened and read the same; and as soon as he had learned these facts from the wife of Guadalupe Berryesa, he went to see if Berry had given information of the express, but observing, after conversing a considerable time, that Berry made no mention of the arrival of said express, when the deponent said to him: "Don Berry, I know that this evening an express has arrived from Sancelito, that you have told me nothing about it; where is the letter that was brought?" Whereupon Berry answered, "Yes; I have it here;" when he went and got it, and delivered it to the deponent, saying, "Here it is; it is a matter of no importance." Whereupon the deponent received the same, observing that the letter was opened, and he knew that Berry had opened it and read the same. Whereupon
330 the deponent said to him, "Don Berry, how is this? This is a letter of the service, and it has been opened. Who has opened it?" Whereupon Berry responded that he had received it thus, and then deponent directed Enesmergildo to be called, examining him carefully as to how he came to bring the letter open. Whereupon Enesmergildo replied that he had not brought the letter open, but that it was sealed when he delivered it; but that Don Berry, before him and the wife of Berryesa, had opened and read the same, and that the alcalde, Antonio Ysidoro, knew very well that the letter was sealed when he delivered it. Whereupon the deponent said to Berry: "Well, you say that you received this letter open. I am going to send it as it is; you can take the consequences." Berry to this made no reply. Whereupon, to make the matter more clear, I ordered the alcalde, Ysidoro, to be called, and asked him whether or not the letter was open when he received it. The alcalde answered that he
331 knew that the letter was sealed, because he had accidently seen it in the hands of Enesmergildo when he was going to deliver it; and thereupon the deponent ordered the said alcalde to call a vaquero, to carry the letter as far as "Nompali," and from that place the owner of the rancho Camilo should carry it as far as Sonoma, and that, the vaquero being ready to start, the deponent delivered the letter to the alcalde, and he, the alcalde, said to him, "Sir, this

letter is open; does it go so?" Whereupon the deponent said to him, "Hombre Don Berry said he received it thus, and thus it shall be carried."

Question. If, beside the information he received from Enesmergilda, the alcalde, Ysidora, and the wife of Guadalupe Berryesa, he made any other investigations to satisfy himself in relation to the matter. He replied that besides the investigations he made on this day with Enesmergilda, the alcalde, and the wife of Beryesa, on another day, learning accidentally that Don Guillermo Richardson had arrived, he being the person who had sent the letter from his rancho of
332 Saucelito, I said to him: "Señor Don Guillermo, yesterday evening an express arrived here with a letter for the service, directed to the military comandant of Sonoma, which was received by James Berry, and when he delivered it to me it was open; did you send it thus?" Whereupon Don Guillermo responded to deponent that he had not sent it open, especially as it was on matters relating to the service; that he had nothing more to add; that what he had said was the truth, upon his word of honor, all of which he affirmed and ratified after the same was read to him; that he was forty-six years of age. Signing with the said justice and escribaño.

YGN'CIO HIGUERA.
RAFAEL GARCIA.

Before me.

JOAQUIN PINA.

Declaration of 4th witness.

On said day, month, and year, the said judge fiscal of this proceeding caused to appear before him the said alcalde of this pueblo, Antonio Ysidora, fourth witness, who, before me, the escribaño, was caused to raise his right hand, and was asked:
333 Question. Do you swear by God and promise the nation of the United States of Mexico to speak the truth in answer to the questions that may be asked. He replied, I swear.

Question. His name and calling; if he is acquainted with James Berry, and knows where he is to be found. He replied, he is called Antonio Ysidora; that he is acquainted with James Berry, and that he is to be found at the pueblo of Sonoma.

Question. If he knows what business Berry has in Sonoma, or with what object he has gone there. He replied that Berry has gone to Sonoma to answer in relation to receiving a letter which was delivered to him by Enesmergilda—if it was opened as delivered to Rafael Garcia, or sealed as the deponent had seen it when it was brought.

Question. When was it he saw the letter sealed, at what hour, and how he knew that Berry had delivered it to Garcia open? He replied that when he saw the letter sealed, it was when Enesmergilda arrived with it from the ranch of Saucelito, enquiring of deponent
334 where he would find the ensign, Don Rafael Garcia? To whom he replied that he had gone horseback to cañada of Herrera, perhaps, for a ride, and that then Enesmergildo, who had the letter in his hand, asked the deponent to whom he should deliver it. Whereupon he told him that he should go to the guard-house, and deliver

it to Señor Berry; that he supposed he was there; that in the mean time he saw that the letter was sealed; that then Enesmergildo went to the guard-house, and the deponent went to attend to his own business.

That about the hour of evening prayers, learning that Don Rafael Garcia had arrived, he went and informed him that a letter had arrived from the ranch of Saucelito, and that it had been delivered to Don Berry, and that then Don Rafael, in company with deponent, went to the guard-house, and that the deponent observed that Don Rafael asked Don Berry where the letter was, and that Berry answered, I have it; it contains nothing interesting; it is a matter
335 of no importance Whereupon deponent saw Berry go into the guard-house, bring out the letter, and deliver it to Garcia. Whereupon the deponent observed that Garcia asked Berry how it was that the letter was opened, and Berry answered that thus he had received it. Whereupon Don Rafael Garcia ordered deponent to call a vaquero to carry the letter as far as the Rancho Nompali, and the deponent immediately called the vaquero Marianito, to whom he delivered the letter, that he might carry it to Nompali, and from thence that the owner of the Rancho Camilo should carry it to Sonoma; but that the deponent saw that the letter was opened, and said to Don Rafael, "Sir, this letter is open; does it go thus?" Don Rafael answered, before Don Berry: "Let it be carried thus; Don Berry says he received it so. Carry it; he can take the consequences;" that he has nothing more to say; that the foregoing is the truth under the oath that he has made, all of which he affirmed and ratified after the same was read to him. He was 40 years of age, and, not know-
336 ing how to wrote, he made the sign of the cross. Signed by said justice and the escribano.

+.
YGN'C'O HIGUERA.

Before me.

JOAQUIN PINA.

Citation of the 5th witness, Marianito, who is absent from this pueblo.

In the pueblo of San Rafael, on the 27th of the month of May, 1840, the judge fiscal of this investigation ordered these proceedings to be suspended until the fifth witness, Marianito Vaquero, of this pueblo, who is absent on the rancho of Tomales, and whom I have ordered to be summoned. In witness whereof, said justice signed the same, which I, the undersigned escribano, attest.

YGN'C'O HIGUERA.

Before me.

JOAQUIN PINA.

In the pueblo of San Rafael, on the 28th day of May, 1840, the fifth witness, referred to in the foregoing proceedings, having appeared, the judge ordered the proceedings to be continued. In witness whereof, the same is signed by the judge, which I, the escribano, attest.

YGN'C'O HIGUERA.

Before me.

JOAQUIN PINA.

letter is open; does it go so?" Whereupon the deponent said to him, "Hombre Don Berry said he received it thus, and thus it shall be carried."

Question. If, beside the information he received from Enesmergilda, the alcalde, Ysidora, and the wife of Guadalupe Berryesa, he made any other investigations to satisfy himself in relation to the matter. He replied that besides the investigations he made on this day with Enesmergilda, the alcalde, and the wife of Beryesa, on another day, learning accidentally that Don Guillermo Richardson had arrived, he being the person who had sent the letter from his rancho of
332 Saucelito, I said to him: "Señor Don Guillermo, yesterday evening an express arrived here with a letter for the service, directed to the military comandant of Sonoma, which was received by James Berry, and when he delivered it to me it was open; did you send it thus?" Whereupon Don Guillermo responded to deponent that he had not sent it open, especially as it was on matters relating to the service; that he had nothing more to add; that what he had said was the truth, upon his word of honor, all of which he affirmed and ratified after the same was read to him; that he was forty-six years of age. Signing with the said justice and escribaño.

YGN'CIO HIGUERA.
RAFAEL GARCIA.

Before me.

JOAQUIN PINA.

Declaration of 4th witness.

On said day, month, and year, the said judge fiscal of this proceeding caused to appear before him the said alcalde of this pueblo, Antonio Ysidora, fourth witness, who, before me, the escribaño, was caused to raise his right hand, and was asked:
333 Question. Do you swear by God and promise the nation of the United States of Mexico to speak the truth in answer to the questions that may be asked. He replied, I swear.

Question. His name and calling; if he is acquainted with James Berry, and knows where he is to be found. He replied, he is called Antonio Ysidora; that he is acquainted with James Berry, and that he is to be found at the pueblo of Sonoma.

Question. If he knows what business Berry has in Sonoma, or with what object he has gone there. He replied that Berry has gone to Sonoma to answer in relation to receiving a letter which was delivered to him by Enesmergilda—if it was opened as delivered to Rafael Garcia, or sealed as the deponent had seen it when it was brought.

Question. When was it he saw the letter sealed, at what hour, and how he knew that Berry had delivered it to Garcia open? He replied that when he saw the letter sealed, it was when Enesmergilda arrived with it from the ranch of Saucelito, enquiring of deponent
334 where he would find the ensign, Don Rafael Garcia? To whom he replied that he had gone horseback to cañada of Herrera, perhaps, for a ride, and that then Enesmergildo, who had the letter in his hand, asked the deponent to whom he should deliver it. Whereupon he told him that he should go to the guard-house, and deliver

it to Señor Berry; that he supposed he was there; that in the mean time he saw that the letter was sealed; that then Enesmergildo went to the guard-house, and the deponent went to attend to his own business.

That about the hour of evening prayers, learning that Don Rafael Garcia had arrived, he went and informed him that a letter had arrived from the ranch of Saucelito, and that it had been delivered to Don Berry, and that then Don Rafael, in company with deponent, went to the guard-house, and that the deponent observed that Don Rafael asked Don Berry where the letter was, and that Berry answered, I have it; it contains nothing interesting; it is a matter
335 of no importance Whereupon deponent saw Berry go into the guard-house, bring out the letter, and deliver it to Garcia. Whereupon the deponent observed that Garcia asked Berry how it was that the letter was opened, and Berry answered that thus he had received it. Whereupon Don Rafael Garcia ordered deponent to call a vaquero to carry the letter as far as the Rancho Nompali, and the deponent immediately called the vaquero Marianito, to whom he delivered the letter, that he might carry it to Nompali, and from thence that the owner of the Rancho Camilo should carry it to Sonoma; but that the deponent saw that the letter was opened, and said to Don Rafael, "Sir, this letter is open; does it go thus?" Don Rafael answered, before Don Berry: "Let it be carried thus; Don Berry says he received it so. Carry it; he can take the consequences;" that he has nothing more to say; that the foregoing is the truth under the oath that he has made, all of which he affirmed and ratified after the same was read to him. He was 40 years of age, and, not know-
336 ing how to wrote, he made the sign of the cross. Signed by said justice and the escribano.

+.
YGN'C'O HIGUERA.

Before me.

JOAQUIN PINA.

Citation of the 5th witness, Marianito, who is absent from this pueblo.

In the pueblo of San Rafael, on the 27th of the month of May, 1840, the judge fiscal of this investigation ordered these proceedings to be suspended until the fifth witness, Marianito Vaquero, of this pueblo, who is absent on the rancho of Tomales, and whom I have ordered to be summoned. In witness whereof, said justice signed the same, which I, the undersigned escribano, attest.

YGN'C'O HIGUERA.

Before me.

JOAQUIN PINA.

In the pueblo of San Rafael, on the 28th day of May, 1840, the fifth witness, referred to in the foregoing proceedings, having appeared, the judge ordered the proceedings to be continued. In witness whereof, the same is signed by the judge, which I, the escribano, attest.

YGN'C'O HIGUERA.

Before me.

JOAQUIN PINA.

337 *Declaration of the 5th witness.*

In the said day, month, and year, the said justice fiscal caused to appear before him the vaquero Marianito, the 5th witness in this investigation, who I caused, in the presence of the escribaño, to raise his right hand, and put to him the following questions:

Question. Do you swear by God and promise the U. S. of Mexico to speak the truth in reply to the questions that may be asked you? He replied, I swear.

Question. His name and calling. If he is acquainted with James Berry, and knows where he is to be found. He said that his name is Mariaño; that he is a vaquero of the Mission of San Rafael; that he is acquainted with James Berry, and knows he is at the Mission of San Solano.

Question. If he knows the object that has taken Berry to San Solaño; that he will give a particular account of all that he may know in relation to the matter.

He answered that he knew, from Antonio Ysidoro, the alcalde, that Berry had been called to Solaño to answer charges preferred
338 against him for opening a letter which he had received in the guard, and that was all he knew in relation to the matter.

Question. If he knew who had brought the letter to Sonoma—that is, the letter that Berry had opened in the guard?

He replied that it was he, himself, that had brought the letter as far as Nompali, and that there had delivered it to Camilo, the owner of that ranch.

Question. If the letter was opened or sealed when he received it, and who was it that told him to carry it to Nompali, and who was present when he received it.

He replied that the letter was open when he received it; that there was no one present but the alcalde, Ysidoro, who delivered it to him; that he has nothing more to say in relation to the matter. What he has said is the truth under the oath that he has taken; all of which he affirmed and ratified after the declaration was read to him. That he was twenty years of age, and not knowing
339 how to write, that he made the sign of the cross. Signed with the escribaño.

†
YGN'CIO HIGUERA.

Ante mi.

JOAQUIN PINA.

Order suspending the proceedings in order to go to Sonoma, at which place is the party accused.

Whereupon, in the same day, month, and year, testimony of the five foregoing witnesses having been concluded, the judge fiscal ordered these proceedings to be suspended to be continued in Sonoma, the place where the accused party, James Berry, is under arrest.

In witness whereof, the same is signed by the said officer, which I, the escribano, attest.

YGN'CIO HIGUERO.

Before me. JOAQUIN PINA.

In the plaza of Sonoma, on the 29th day of May, 1840, having arrived at the pueblo of San Rafael where the testimony of the foregoing witnesses was concluded, the said judge fiscal of this proceeding ordered on this day to continue the proceedings, until taking the confession of the accused party, James Berry,
340 who is under arrest, in this pueblo, by order of military commander, Don Salvador Vallejo.

In witness whereof, the same is signed by the said judge, which I, the said escribano, attest.

YGN'C'O HIGUERA.

Before me.

JOAQUIN PINA.

Confession of the accused, James Berry.

Whereupon, said judge fiscal caused to appear before him the said James Berry, who, having caused him to lift up his right hand, he was asked:

Question. Do you swear by God and to the nation of the U. S. of Mexico to speak the truth in reply to the questions that may be asked you?

He answered, I swear.

Question. His name, age, country, religion, and employment.

He replied that his name was James Richard Berry; that his age was forty years, and that his country was Ireland, belonging to Great Brittain; that he was a Roman Catholic, and a laborer by profession.

Question. If he knew the cause for which he had been summoned to appear by the military commander. He answered that he did not.

341 Question. If he knows anything of a letter that was directed to the military commandant when he was in the auxillery service of San Rafael. Shall state particularly all he knows in relation to the matter.

He replied that in relation to the question, that he received a letter from the hands of an Indian, who brought it from Saucelito, and that the Indian asked him to whom he should deliver the letter. He replied that he should deliver it to the administrador or to Garcia; that the deponent saw that he brought a paper; that he opened said package, and found a letter enclosed directed to San Solano; that he left the letter on his bed, which was in the guard-house, and went to the house of the administrador, whom he asked if he had any one to send to Sonoma, since a letter had arrived which was addressed to the comandante of Sonoma; that the administrador replied that there was no one going to Sonoma; that the deponent remained conversing with the administrador until about seven o'clock
342 in the evening, when Garcia arrived at the guard-house; and as soon as he dismounted from his horse, he told him that a letter had arrived, directed to Sonoma, which he delivered to Garcia; and after having entered the house about half an hour, Garcia asked him if any other letters had been brought save the one he had delivered to him. He replied that none had been received save the one the Indian had given to him.

337 *Declaration of the 5th witness.*

In the said day, month, and year, the said justice fiscal caused to appear before him the vaquero Marianito, the 5th witness in this investigation, who I caused, in the presence of the escribaño, to raise his right hand, and put to him the following questions:

Question. Do you swear by God and promise the U. S. of Mexico to speak the truth in reply to the questions that may be asked you? He replied, I swear.

Question. His name and calling. If he is acquainted with James Berry, and knows where he is to be found. He said that his name is Mariaño; that he is a vaquero of the Mission of San Rafael; that he is acquainted with James Berry, and knows he is at the Mission of San Solano.

Question. If he knows the object that has taken Berry to San Solaño; that he will give a particular account of all that he may know in relation to the matter.

He answered that he knew, from Antonio Ysidoro, the alcalde, that Berry had been called to Solaño to answer charges preferred
338 against him for opening a letter which he had received in the guard, and that was all he knew in relation to the matter.

Question. If he knew who had brought the letter to Sonoma—that is, the letter that Berry had opened in the guard?

He replied that it was he, himself, that had brought the letter as far as Nompali, and that there had delivered it to Camilo, the owner of that ranch.

Question. If the letter was opened or sealed when he received it, and who was it that told him to carry it to Nompali, and who was present when he received it.

He replied that the letter was open when he received it; that there was no one present but the alcalde, Ysidoro, who delivered it to him; that he has nothing more to say in relation to the matter. What he has said is the truth under the oath that he has taken; all of which he affirmed and ratified after the declaration was read to him. That he was twenty years of age, and not knowing
339 how to write, that he made the sign of the cross. Signed with the escribaño.

†
YGN'CIO HIGUERA.

Ante mi.

JOAQUIN PINA.

Order suspending the proceedings in order to go to Sonoma, at which place is the party accused.

Whereupon, in the same day, month, and year, testimony of the five foregoing witnesses having been concluded, the judge fiscal ordered these proceedings to be suspended to be continued in Sonoma, the place where the accused party, James Berry, is under arrest.

In witness whereof, the same is signed by the said officer, which I, the escribano, attest.

YGN'CIO HIGUERO.

Before me. JOAQUIN PINA.

In the plaza of Sonoma, on the 29th day of May, 1840, having arrived at the pueblo of San Rafael where the testimony of the foregoing witnesses was concluded, the said judge fiscal of this proceeding ordered on this day to continue the proceedings, until taking the confession of the accused party, James Berry,
340 who is under arrest, in this pueblo, by order of military commander, Don Salvador Vallejo.

In witness whereof, the same is signed by the said judge, which I, the said escribano, attest.

YGN'C'O HIGUERA.

Before me.

JOAQUIN PINA.

Confession of the accused, James Berry.

Whereupon, said judge fiscal caused to appear before him the said James Berry, who, having caused him to lift up his right hand, he was asked:

Question. Do you swear by God and to the nation of the U. S. of Mexico to speak the truth in reply to the questions that may be asked you?

He answered, I swear.

Question. His name, age, country, religion, and employment.

He replied that his name was James Richard Berry; that his age was forty years, and that his country was Ireland, belonging to Great Brittain; that he was a Roman Catholic, and a laborer by profession.

Question. If he knew the cause for which he had been summoned to appear by the military commander. He answered that he did not.

341 Question. If he knows anything of a letter that was directed to the military commandant when he was in the auxillery service of San Rafael. Shall state particularly all he knows in relation to the matter.

He replied that in relation to the question, that he received a letter from the hands of an Indian, who brought it from Saucelito, and that the Indian asked him to whom he should deliver the letter. He replied that he should deliver it to the administrador or to Garcia; that the deponent saw that he brought a paper; that he opened said package, and found a letter enclosed directed to San Solano; that he left the letter on his bed, which was in the guard-house, and went to the house of the administrador, whom he asked if he had any one to send to Sonoma, since a letter had arrived which was addressed to the comandante of Sonoma; that the administrador replied that there was no one going to Sonoma; that the deponent remained conversing with the administrador until about seven o'clock
342 in the evening, when Garcia arrived at the guard-house; and as soon as he dismounted from his horse, he told him that a letter had arrived, directed to Sonoma, which he delivered to Garcia; and after having entered the house about half an hour, Garcia asked him if any other letters had been brought save the one he had delivered to him. He replied that none had been received save the one the Indian had given to him.

Question. Why do you say that you did not observe whether or not the letter was sealed when you received it? when it appears by the testimony of witnesses, and even by Garcia himself, that as the letter was open, and that he received it thus, that the deponent should abide the consequences; and it appears that you responded, also, it is a matter of no importance; that thus it was he had delivered it to him. It appears, also, that you read the letter before the wife of Guadalupe Berryesa and the Indian who delivered it; that they saw you break open the letter that was sealed with wax.

He replied that he did not know whether it was opened or whether it was sealed; that the only thing that he observed was the
343 superscription; that in relation to Garcia asking him if the letter had been received open, that it was not so, since the deponent had no notice of the letters being open. Capt. Don Salvador asked him if he knew why he had been called or summoned? That he answered that he did not; that then Don Salvador told him that he had been summoned to answer a charge against him for opening a letter, directed by Richardson of Saucelito, giving notice of the arrival of a "launch," &c., and that Garcia had given Don Salvador intimation of this fact. Whereupon he replied to Don Salvador that he had read nothing more than the superscription on the letter. That he did not observe whether or not the letter was sealed, and that he did not know whether or not the letter had been opened in the guard-house by the drunken fellows who were returning from the fandango, which for two days had been going on on the ranch of Caleveras. It may have been opened by one of these. That in relation to the charge of his having opened the letter before the woman and the Indian, he said that it was wholly untrue; that he read
344 the superscription, but knew nothing about the contents of the same.

Question. If he knew the penalty for opening public or private correspondence.

He replied that he did not understand the question.

Question. If he had anything more to add.

He replied that he was altogether ignorant of what he was accused; that what he had stated was true under the oath that he had made; which confession he ratified after the same had been read to him, signed the same with the judge and escribaño.

YGN'C'O HIGUERA.
JAMES R. BERRY.

Before me. JOAQUIN PINA.

Conclusion.

Citizen Ygnacio Higuera, judge fiscal in this examination, in view of the declarations and charges which have been made against James Berry, accused of having opened, in the guard-house of pueblo of San Rafael, an official letter directed to this comandancia during the last month, and he having denied the charge, notwith-
345 standing the same had been proven by two witnesses who saw him open and read the letter; and besides it appears, by the

3d witness, that he had questioned Berry as to the letters being opened when he had received it, notwithstanding Berry had denied the matter, and, besides, it appears by the original letter, which is herein inserted, that the same was sealed with wax. There are many reasons which lead to the belief that Berry is guilty of the crime of which he is accused.

Wherefore it is decreed, in the name of the Mexican nation, that a fine of one hundred dollars be imposed upon the said James Berry, and that he be driven from the territory, as well on account of the enormity of the crime as because he is a suspicious foreigner, and in no way beneficial to the department.

The comandancia general will resolve that which, by the orders, may be mete for this crime.

YGN'C'O HIGUERA.

SONOMA, *May* 29, 1840.

On the same day, month, and year, the judge fiscal, in view
346 of the declaration and confession of the accused, went in company with the escribano to the house of the military commandant, Don Salvador Vallejo, to deliver him the proceedings, composed of twelve written leaves, two letters, and the cover, with one blank leaf; and in witness of having done the same, the said justice signed, which I attest.

YGN'C'O. HIGUERA.

Before me. JOAQUIN PINA.

Capitania Port of San Francisco:

The letter which I sent to the military comandante of Sonoma was well sealed with wax, and I say this, too, under my word of honor, in reply to yours of the 26th inst.

God and liberty. San Francisco, 28th May, 1840.

GUILL'O RICHARDSON.

To the citizen Ygn'c'o Higuera, sergeant of the cavalry company of Sonoma.

SONOMA, *June 4th*, 1840.

The señor military commander, although in this examination the opening of a letter directed to the military commander of this frontier by the captain of the port in San Francisco, by James Berry, is sufficiently proved, taking in consideration the opinion of the
347 fiscal in the other matters set forth in the proceedings, and the time that said Berry has been imprisoned, his fine may be reduced to forty dollars, seriously admonishing him hereafter to keep within the limits of his duty, under the penalty of receiving the full rigor of the law. This is my opinion in the cause wherefore the said individual be set at liberty, collecting from him above amount. These proceedings will be filed in the archives.

M'NO G. VALLEJO.

SONOMA, *June 4th*, 1840.

The foregoing decree is complied with; these documents are returned to-day to the archives, as ordered.

SALVADOR VALLEJO.

The foregoing is a correct translation of Exhibit No. 1 to deposition of M. G. Vallejo.

R. C. HOPKINS.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

348

349 *Exhibit Vallejo No. 2, for claimant.*

S'or Com'te G'ral:

FRAN'CO, 12 *de Mayo de* 1839.

Señor habiendome V. S. dicho de que sillo mepasaba al oba tado me consederia el parajel de la laguna de S. Antonio mepasovia todos mis bienis, y me sobtario ami hijo Jose Ygo. y siendo anci estar en la mejor dis pocecion del parveme y vasdecas mei en pesa frontera y si V. S. me conterta el qe. meconsedel estos fabor es yo comicionary a mi hijo Suan pa. qe. el bella aber el paraje y desporyo de el pr. qe yo me haller un poco informe V. S. mande cieste sueriordo q. B. S. M.

BARTOLO BOJORQUS.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Cl'k.*

Claimant's translation.—Exhibit Vallejo No. 2, annexed to dep. of R. C. Hopkins.

SAN FRANCISCO, *May* 12, 1839.

Señor Comandante General:

SEÑOR: You having told me that if I would pass over to the other side you would concede to me the place of the Laguna de S. Antonio, that you would have my stock taken over, and that you would discharge my son, José Ignacio, and this being the case, I have the disposition to go and establish myself on that frontier; and if you reply that you will concede me this favor, I will commission my son Juan to go and see the place and dispose of the same, since I am a little indisposed. Your obedient servant, who kisses your hands,

BARTOLO BOJORQUES.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

350 *Deposition No. 2 of R. C. Hopkins, for claimant.*

THE UNITED STATES
v
ELLEN E. WHITE, adm'x, &c. } In land cases.—Disct. court No. 346. Land com. No. 558.

In the district court of the United States for the northern district of California.

Be it remembered, that on this 15th day of October, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllis-

ter, a commissioner duly appointed by the circuit court of the United States for the districts of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared R. C. Hopkins, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: Wm. H. Sharp, U. S. att'y, by J. J. Williams; A. P. Crittenden, for claimant.

Question 1st. Your name, age, and place of residence?

Ans. 1. R. C. Hopkins; am over 21 years of age; San Francisco.

351 Ques. 2. You are the same R. C. Hopkins, are you not, who has been heretofore examined in this case

Ans. I am.

Ques. 3. You still occupy, do you not, the position of keeper of the archives in the office of the surveyor gen'l of the U. S. for the State of California, which you held at the time of your former examination?

Ans. I do.

Ques. 4th. Please produce the original Ortega espediente, and examine the certificate of vacancy which appears therein, signed M. G. Vallejo, and particularly the color of the ink with which the said certificate is written, and state whether or not you find, in the archives in your charge, any papers or documents written or signed by said M. G. Vallejo, about the same time as that certificate, with the same or similar ink.

Ans. The certificate of vacancy referred to upon the espediente of Ortega is dated Sonoma, July 30th, 1840. It is written with very black ink. In vol. 88, the "Departmental State Papers, Benicia, Military," on page 411, there is a communication from M. G. Vallejo, comandante general, directed to the commissary, Don José Abrigo, dated Sonoma, July 28th, 1840. This letter is also

352 written with very black ink—about the same color as the certificate referred to in the Ortega expediente.

Ques. 5th. From the appearance of the writing of the rubric of M. G. Vallejo to his signature at the foot of the certificate of vacancy in said expediente, would you say that it had been written or made (I refer to the rubric) before or after the sheet upon which it is written had been folded?

Ans. An inspection of the rubric referred to shows very clearly, I think, that the rubric was made after the paper had been folded. At the lower part of the rubrica there is a fold in the paper by which, as usual, the paper is somewhat broken. In making the rubrica the pen appears to have been caught upon this fold, and the ink has penetrated through the paper, showing that the surface of the paper had been broken when the rubrica was made.

Ques. 6th. How does that fold run?

Ans. Across the sheet, about the centre.

Ques. 7th. Is there any other fold upon the sheet?

Ans. There are three folds across the sheet, and three folds lengthwise the sheet.

353 Ques. 8th. Along which of those folds are the creases in the paper the deepest?

Ans. In the folds across the paper.

Ques. 9th. As indicated by the appearance of the paper, in what way has it been usually folded?

Ans. It appears to have been folded more acrossways than lengthways.

Ques. 10th. Examine the decree of concession which appears in said Ortega's espediente, and is dated August 10th, 1840, and signed Alvarado, and examine especially the color of the ink with which that decree is written, and state whether or not there are, in the archives under your charge, any papers or documents written or signed by Gov. Alvarado, about the date of that decree of concession with the same or similar ink?

Ans. The decree of concession referred to in the Ortega expediente, is written with pale ink, having a slightly reddish tinge. In volume 4, "Departmental State Papers, Benicio, Commissary and Treasury," page 391, there is a document in the handwriting of Gov. Alvarado, and signed by himself, which appears to me to be in ink much of the same color. This document is an order of Gov.

354 Alvarado upon the commissary, in favor of Wm. Dickey, for $88. It is not dated, but it is found in a bundle of documents, on the cover of which is endorsed, in the handwriting of José Abrigo, "Documents pertaining to the month of August, 1840." In volume 2, "Departmental State Papers, Naturalization," page 92, there is a marginal order in the handwriting of Gov. Alvarado, signed by him, written between the 23d and 29th days of July, 1840, which is also in pale ink, very closely resembling the ink with which the decree of concession is written. The writing has, however, I think, something of a softer appearance, and perhaps the writing referred to in the book may have a little less of the reddish tinge than the ink with which the decree of concession is written.

Ques. 11th. Have you examined the ink with which those several papers are written, with a magnifying glass?

Ans. I have.

Ques. 12th. How does the handwriting in the decree of concession, compare with that of the first writing mentioned by you in answer to question 10th?

Ans. They bear strong resemblance, both having somewhat a stiff appearance as if written with a hard-pointed pen.

355 Ques. 13th. Have you found the same or similar ink in any other writings in the archives?

Ans. I have found in the archives ink of allmost all shades, some very closely resembling in shade the ink with which the decree of concession is written, but I think none so exactly of the same shade as the document first referred to by me.

Ques. 14th. Have you made search among the archives for writings in ink of that shade?

Ans. I have.

Ques. 15th. Are there among the archives, documents, and papers, in which ink of different shades and colors is used in writing a single paper or instrument?

Ans. There are.

Ques. 16th. Please mention some of them.

Ans. Volume 6, "State Papers, Mission," there are several communications from M. G. Vallejo to the gov. of the territory, in which the heading of the document and the signatures are written in different colored ink from the body of the instrument.

356 These documents referred to are found in said volume from pages 612 to 619.

In espediente 171 the marginal reference upon the first page, written and signed by Gov. Alvarado, dated the 8th day of March, 1837, shows two different colored inks, to wit: the first half is written in pale ink and the last half in dark ink.

In the espediente 352, being the grant for Las Mariposas in the petition, of Gov. Alvarado, the grantee, the words Las Mariposas appear to be in different handwriting and different ink.

There are numerous instances of that kind.

Ques. 17th. Please produce the original espediente No. 397, being the espediente of Juan Miranda, a copy of which is on file in this case, and state whether or not you are acquainted with the handwriting of Francisco Arce, and whether or not the two grants or drafts of grants appearing in that espediente, No. 397, are in the handwriting of said Francisco Arce.

Ans. I am acquainted with the handwriting of Francisco Arce. The two grants referred to are not in his handwriting.

Ques. 18th. Examine the original diseños which appear, one in the Ortega espediente and the other in the Miranda espediente, both of which originals are now before you, and state whether or

357 not the one is an exact copy of the other.

Ans. The one is not a fac simile of the other. The external lines do correspond, but in the interior of the map, especially in the lettering, there are some discrepancies.

Ques. 19th. Are they upon the same or different kind of paper?

Ans. I think that both are upon the same kind of paper.

Ques. 20th. Can you state, from your acquaintance of the archives, whether or not it was usual for a person applying for a grant of land to present two copies of the diseño of the land, or whether, within your knowledge, such a thing was ever done?

Ans. From my knowledge of the archives, I don't think there is any case in which the petitioner presented two copies of the map of the land asked for with his petition. There are cases where the map was ordered to be reformed, and in which the espediente shows more than one map. On reflection, I think there is an espediente in which there are two maps alike.

Ques. 21st. Is there anything in the archives which shows the appointment of any other person than Antonio Ortega as mayordomo or administrator of the ex-mission of Sonoma?

358 Ans. Not that I have been able to find.

Ques. 22nd. Examine the paper now shown you, being Exhibit Vallejo No. 2, annexed to dep. of M. G. Vallejo, being a letter in Spanish, signed Bartolo Bojorques, dated San Francisco, 12th May, 1839, and state whether or not you have made the translation of that document. If yea, is it a correct translation?

Ans. I have made a translation of said document; I now produce it, annexed to my dep. It is a correct translation. (The translation of Exhibit No. 2 is hereto annexed to his dep.)

Ques. 23d. Do you know the rubric of M. G. Vallejo?

Ans. I do.

Ques. 24th. In your deposition taken in this case on the 16th July, 1861, in question 27, being the 2nd question of that number in the same deposition, you were asked, "Does not all the writing of Alvarado found in the archives for the year 1840 manifestly appear to have been written with a quill pen?" to which you answered, "I think it does." Has your examination of the archives since the making of that answer changed your opinion upon that point?

359 Ans. From the examination of the archives made since that time, I will state that while Alvarado appears to have written with a quill pen, still there is some of his manuscript found in the archives which has the appearance of having been written either with a steel pen or a very hard-pointed quill pen.

Cross-examination.—Questions by J. J. Williams.

Ques. 25th. Answer ques. 12th with reference to the last document referred to in your answer to ques. 10th.

Ans. The second writing referred to in my said answer has something of a freer and easier appearance than the first writing referred to, and than the decree of concession in the espediente. It is manifestly written with a softer pen.

Ques. 26. Compare the rubrics of Alvarado on the two papers last referred to, and state if there is any difference, and if yea, in what that difference consists.

Ans. They do not appear to be exactly alike, one being more distinct than the other.

Ques. 27th. Count the lines or strokes of the pen in each rubric under the letter "A" and state the number.

360 Ans. There are nine in the decree of concession and seven in the other document referred to.

Direct examination resumed.

Ques. 28th. Look at the rubric of Alvarado on the 1st document referred to in answer 10th and state how many lines you find in that rubric under the letter "A."

Ans. There are seven.

Ques. 29th. Have you any doubt that that is the genuine rubrica and signature of Alvarado which appears at the foot of the decree of concession on Ortega's espediente?

Ans. I have no doubt but the signature and rubrica of Alvarado found at the end of the decree of concession referred to were made by himself.

R. C. HOPKINS.

Subscribed and sworn to before me this 15th day of October, A. D. 1861.

[SEAL.] CUTLER McALLISTER,
U. S. Comm.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

361 *Translation of espediente of Juan Vioget*, 1842.

Proceedings at the instance of Don Juan Vioget, who petitions for the parcel of land herein described—year 1842, No. 280.

Proceedings at the instance of Don Juan Vioget, who petitions for a certain parcel of land herein described—year 1842, No. 280.

To his Excellency the Governor:

Juan Vioget, a Mexican citizen resident of Yerba Buena, in the Bay of San Francisco, before your exc'y appears, and says that being the owner of some large cattle, (ganada mayor,) and wanting a place for the improvement of the same, I request that your excellency may grant me the parcel of land exhibited in the plan annexed to this petition, which land is at present unoccupied, (valdio,) as shown by the document signed by Commandant General Don Guadalupe Vallejo. I therefore request your excellency to grant me my petition, a favor I shall receive with many obligations, and will make oath of all that may be deemed necessary.

Monterey, June 1st, 1842.

JUAN VIOGET.

362 SONOMA, *May* 23*d*, 1842.

I grant provisionally to Don Juan Vioget, a Mexican citizen, the land he solicits in his petition, but the ranchos which surround it not having been measured, the owners of those, in case of any dispute, shall have a previous right to the same.

That land being unoccupied, and belonging to no private indivdiual, he may settle on it provisionally, and solicit the requisite titles of the political gover't of this department. It is not within the 20 leagues from any foreign boundary; but it is within the 10 leagues from the seashore mentioned in the law of the 18th August; 1824.

M. G. VALLEJO.

Señor Com't General:

Juan Vioget, a Mexican citizen, resident on the bay of Yerba Buena, in the harbor of San Francisco, Alta California, in due form, and as it may be most acceptable, before your honor present myself and say, that it being my intention to reside permanently in this department, and wanting a piece of land to establish my property, I

have examined one for that purpose. The same is bounded by lands of Messrs. McIntosh and James Dawson, on the west and NW.; on the NE. by Cotate; by Petaluma on the SE.; on the south by the rancho of San Antonio, and on the north by Santa Rosa, containing six square leagues, (lots for large cattle,) (sitios de ganada mayor.) Having examined all the vacant places and *valdios* which might interfere, and submitting myself to the laws in force in that respect, I would
363 request that your honor will grant me my petition, which favor I shall receive in justice. Testifying under oath that the above is not made in malice, I remain, &c.

JUAN VIOGET.

NOTE.—This is not written on stamp paper, because that required by law cannot be found here.

Juan B. Alvarado, constitutional governor of the department of the Californias:

Whereas Don Juan Vioget has claimed personally, for homself, the parcel bounded by those of Manuel McKintosh and James Dawson, on the west and NW.; by Santa Rosa on the north; on the NE. by Cotate; on the SE. by Petaluma; and on the south by the rancho of San Antonio; and whereas he has complied with the requirements and investigations of the laws and regulations on the subject, in the exercise of the power on me conferred, in the name of the Mexican nation, I have thought proper to grant him provisionally the above-mentioned land.

I therefore command that it be entered in the proper book, after which this patent for a provisional grant shall be returned to the interested party for his own security.

364 MONTEREY, *June 5th*, 1842.

To the exc't departmental assembly of the Californias:

Juan Vioget, a naturalized Mexican citizen, before the exc't departmental assembly of the department of the Californias, with due respect presents himself, saying that having received from General Manuel Micheltorena a parcel of land bounded on the north by the rancho of Don Estaban Smith; on the NW. and west by that of Don Manuel McKintos; the American creek on the south; and on the SE. by San Antonio, the same containing six square leagues, (lots for large cattle,) (sitios de ganada mayor,) in accordance with the title given in Monterey, on the 14th December, one thousand eight hundred forty-four, I humbly request that your excellencies of the departmental board will be pleased to give your approval to said grant, and may receive this petition in common paper, not being able to obtain any stamped sheets.

Angeles, June 11th, 1845. JUAN VIOGET.

MONTEREY, *Dec. 16th*, 1844.

Let the sec'y of state report upon the same.

MICHELTORENA.

1703

To his Exc'y the Governor:

Juan Vioget, a naturalized Mexican citizen, with due respect to your excellency, represents, that a parcel of land was granted to me since the year 1841, situated on the American creek. This grant was a provisional one, by reason of my not being married, the last constitution requiring that a man should be so to obtain lands. But as the present does not require such conditions, I would request your excellency to command that a title of property may be issued in my favor for the land exhibited in the plan annexed to this despatch, to the extent of six square leagues, (lots for large cattle,) (sitios de ganada mayor,) a favor I hope to receive from your excell'y's goodness.

Monterey, Dec'r 14th, 1844. J. VIOGET.

Senor Governor:

The parcel of land in the vicinity of the American inlet, in a direction towards San Rafael, was granted to Don Juan Vioget since the year 1840. That grant was made provisionally, from the fact of his not being a married man, (the constitution of 1836 requiring that a person should be so to obtain lands;) but as this condition is no longer required, I believe that is no objection now to issue him a title to that property.

I deem it proper to remind your exc'y that in the year last past the said parcel of land was denounced by a soldier from Sonoma named Garcia, who stated that the place was not cultivated, but without producing any documents to prove it, and your exc'y directed that the report should be suspended until said Señor Vioget, who was then on a voyage to Lima, in charge of the Mexican bark "Clarita," should return. It is now five months since he arrived on the coast, and Garcia has not again denounced the same, nor has he the means to occupy the land, on which Mr. Vioget has made some considerable disbursement—in the erection of a house, a corral, (pen,) and in preparing the field for a crop—since a provisional grant was issued to him—being known of everybody for honesty and other good qualities, as I understand there is no objection if your exc'y should deem it proper to grant him his petition.

Dated as above.

MAN'L JIMENO.

MONTEREY, *Dec.* 16*th*, 1844.

Having examined the report, I grant what is petitioned for.

Let the title be issued.

MICHELTORENA.

EXCELLENT SIR: The committee on public lands (terrenos valdios) have examined very minutely the proceedings at the instance of Don Juan Vioget, who claims a parcel of land bounded on the north by the rancho of Don Esteban Smit; on the NW. and west by that of Don Manuel McKintos; on the south by the American inlet, (or creek;) and

on the SE. by San Antonio, situated in the jurisdiction of Sonoma, which land was granted to him in fee by the superior government of the department, by a title issued on the 14th of December, 1844. By virtue of which, and from the fact that the committee are satisfied that said grant was made agreeably to the requirements of the laws on the subject, they submit to the deliberation of your excellency the
367 following opinion, (proposicion:)

They approve of the grant made by the superior gov't of the department, by the title lawfully issued on the 14th of December, 1844, in favor of the naturalized Mexican citizen Juan Vioget, the same being of the extent of six square leagues—lots for large cattle, (sitios de ganada mayor,) in the jurisdiction of Sonoma; bounded on the north by the rancho of Don Estaban Smit; on the NW. and west by that of Don Manuel McKintos; on the south by the American creek; and on the SE. by San Antonio, it being in conformity to law of August 18th, 1824, and the 5th article of the regulations of November 21st, 1828.

Hall of the committee, city of Los Angeles, June 19th, 1845.

IGNACIO DEL VALLE.

FRANCISCO DE LA GUERRA.

ANGELES, *June* 23*d*, 1845.

In their session of to day, the exc't departmental assembly have approved the preceding proposition of their opinion, and have ordered that the proceedings be returned to his excellency the governor, that he may dispose of them as he may deem proper.

PIO PICO, *President.*

AUGUSTIN OLIVERA, *Secretary.*

The approval was delivered to the grantee.

368 Juan B. Alvarado, constitutional governor of the department of the Californias:

Whereas Don Juan Vioget has claimed, for his personal benefit, the parcel of land bounded on the west and on the north by those of Manuel McKintos & James Dawson; on the east by Santa Rosa; on the NE. by Cotate; on the SE. by Petaluma; and on the south by the rancho of San Antonio, having complied with the requirements and investigations, in conformance with the laws and regulations in the matter, I have thought proper, by virtue of the authority in me vested, in the name of the nation, to grant him said land provisionally. I therefore command that it be entered in the proper book; and that this letter patent of provisional concession be delivered to the interested party for his own security.

Monterey, June the fifth, one thousand eight hundred and forty.

This, a true copy of the original, annexed to the proceedings at the instance of Don Juan Vioget. It is faithfully correct, and compared, in evidence whereof the present is issued in Monterey, on the 14th day of December, one thousand eight hundred forty-four.

MAN'L JIMENO

Citizen Manuel Micheltorena, brigadier gen'l of the Mexican army, adjutant general of the staff of the same, governor, command-
369 ant gen'l, and inspector of the department of the Californias:

Whereas Don Juan Vioget, a naturalized Mexican, has claimed, for his personal benefit, the parcel of land bounded on the north by the rancho of Don Estevan Smith; on the northwest and west by that of Don Manuel McKintosh; on the south by the American creek; and on the SE. by San Antonio, having complied with the requirements and investigations of the laws and regulations to that effect, I have thought proper, by virtue of the authority in me vested, in the name of the Mexican nation, to grant him the said parcel of land, declaring the same to be his property by this letter patent which he will submit to the approval of the excellent departmental assembly, and under the following conditions:

1st. He shall not sell, alienate, nor mortgage it, nor subject it to rent, bond, nor security, nor to any incumbrance whatsoever.

2nd. He may fence it without obstructing paths, roads, and servitudes. He shall enjoy it freely and exclusively in the use or cultivation he may think proper; but within a year he shall put a house on it, which he shall cause to be inhabited.

370 3d. When the property shall be confirmed, he shall request the respective judge to give him lawful possession by virtue of this letter, by whom the boundaries shall be marked, at the limits of which, besides the landmarks, some fruit trees shall be planted, or else wild ones of some usefulness.

4th. The land which is granted is of six square leagues, (sitios de ganada mayor.) The judge who may give possession will cause it to be measured agreeably to ordinance; the excess (sobrante) which may result to the nation, to be for such uses as may be deemed convenient.

5th. If he should fail in these conditions, he shall lose his right to said land, which any other person can denounce.

Consequently, I command that in view of this title, which is to be held as true and valid, the same be entered in the proper book, and returned to the interested party for his own security and every other purpose.

Given in Monterrey on the 14th of October, 1844.

MANUEL MICHELTORENA.

MAN'EL JIMENO, *Secretary.*

A note of this grant was entered in the respective book, in folio 12. Translated by J. C.

371 Endorsed: No. 24 C—translation. Filed in office Febr'y 9th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B, vol. 15, p. 496.

GEO. FISHER, *Sec'y.*

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the fifteen preceding and hereunto annexed pages, numbered from one to fifteen, inclusive, exhibit a true, full, and correct copy of a document, together with the endorsements thereon, as the same appears on file, in case No. 24, on the docket of said board of commissioners.

In testimony whereof I have hereunto signed my name
[SEAL.] officially and caused my seal of office to be affixed, at the city of San Francisco, this 6th day of April, 1860.

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

_____ _____,
Keeper of Archives.

This document is objected to as evidence in this case, because it is irrelevant and incompetent testimony; but it is agreed
372 that it may have the same force and effect as the original would have under above objection if filed in the case, the production of the original being hereby waived.

WM. H. SHARP,
U. S. Att'y.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

(Here follows map, marked original, page 373.)

375 *Certified copy of original map of espediente of Juan Vioget*, 1842.

376 OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the one preceding and hereunto annexed page of tracing cloth, numbered one, inclusive, exhibit a true, full, and correct copy of a *portion* of an original document entitled "Espediente provido por Dn. Juan Vioget en pretencion del terreno que se espresa, año de 1842, 280," as the same appears on file among said archives, said *portion* constituting and being the *diseño* (map) contained in said original document.

1707

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 6th day of April, 1860.

[SEAL.]

J. W. MANDEVILLE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

377 *Traced copy of espedien'e No.* 320, *filed by claimant.*

Espediente promovido por el yndigena Camilo en pretencion del terreno nombrado Olompali.

320.

Sello quinto, medio real.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MICHELTORENA.

[SEAL.] MANUEL CASTAÑARES.

E. S. Gob. del Dep'to de Calif'a:

Camilo Ynitia, vecino de la jurisd'n de Sonoma en la front'a, ante V. E. como mas á su derecho convenga espone: que hace seis años que posee el terreno el terreno nombrado Olampali, en cantidad de dos sitos de ganado mayor: ha vbicado a el, casa, huerta viñas ganado vacuno caballar, y cuanto es neces'o para lu cultivo, y necesitando el titulo de propriedad hace alg'n tiempo remitando el diseño de estilo el q'e se estravio de archibo seg'n esta informado por el S'r secret'o. A, V. E, sup'ca se digne mandar sele estienda el titulo del terreno mencionado ofreciendo que cuanto antes remitire el correspond'te diseño.

MONTEREY, *Oct'r* 22 *de* 1843.

A pedido y sup'ca del interesado.

M. G. VALLEJO.

MONTEREY, *Oct'r* 21 *de* 1843.

Ynf'e el sor s'rio del gob'o departmental.

MICHE'TO'A.

378 EXMO SOR: El terreno que pretende el indijena Camilo Ynitia está ocupado con entereses de el mismo desde la f'ha que cita segun los informes que con antereoridad sean tomado y por lo mismo es acredar á la gracia que pide si V. E. asi lo tabiere habien.

Monterrey, 21 de O'bre de 1843.

MAN'L JIMENO.

MONTERREY, *Oct'e* 21 *de* 1843.

Conforme con lo informado espidarse el titulo, es en poden venden ni enagenar.

MICHE'TO'A.

MONTERREY, 22 *de Obre de* 1843.

Vista la peticion con que da principio este espediente el informe que presede con todo lo demas que se tubo presente y ver combino de conformidad con las leyes reglam'tos de la materia de llano al indigena.

381 (Here follows map, marked original, page 379.)

382 Manuel Micheltorena, general de brigada del ejercito Mexicana, ayudante gral. de la plana mayor, gobernador, y comandante general del departamente de las Californias:

Por cuanto el indigena Camilo ynitia ha pretendido para su beneficio personal y el de su familia el terreno conocido con el nombre de Nompali colindante con el estero del mismo nombre, con el Arroyo de San Antonio y con el portesuelo de Nobato; practicados previamente las diligencias y aberiguaciones conservientes segun lo dispuesto pr. leyes y reglan'tos de la materia usando de las facultades que me son conferidos a nombre de la nacion Mejicana, he benido en concederle el terreno mencionado declarandole la propiedad de el pr. las presentas letras, sugetandose a la aprobacion de la exma. junta departam'tal y las condiciones sig'tes:

1a. Podra cercarlo sin perjudicar las labesias, caminos, y cerbidumbres, lo disfrutara libre y esclusivam'te destinandolo al uso ó cultivo que mas le acomode.

2a. No podra benderlo enagenarlo ni epotecarlo imponer senso binculo hipoteca en otro gravamen alguno ni pasar amanos muertos.

3a. Solicitará del juez respectivo que le de posecion juridica en virtud de esta despacho pr. el cual se demarcarar los linderos en cuyos limites pondrá amas de los mojoneros algunos arboles frutales ó cilvestres de alguna utilidad.

383 4a. El terreno de que se hace donacion es dos sitios de ganado mayor poca mas ó menos. El juez que diere la posecion lo hard mi div conforme el ordenanza que dando el sobrante que resulte á la nacion para los usos conbenientes.

5a. Si contrabiniere á estos condiciones perderá su derecho al terreno y será denunciable por otra.

En consecuencia mando que teniendosé por firme y valedero este titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey, á 22 de O'bre de 1843.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican

territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the 8 preceding and hereunto annexed pages of tracing cloth, numbered from one to 8, inclusive, exhibit a true, full, and correct copy of an original espediente entitled "Espediente promovido por el indigena Camilo en pretencion del terreno nombrado, Olampali, 320," as the same appears among said archives.

In witness whereof, I have hereunto signed my name officially and [SEAL.] caused my seal of office to be affixed, at the city of San Francisco this 7th day of Aug'st, 1861.

E. F. BEALE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Translation of the espediente of Olampati filed by the claimant.—No. 320.

Expediente instituted by the Indian Camilo, petitioning for the place named *Olampali.*

320.

384 *Petition.*

Fifth seal, 6¼ cents.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year 1843.

MICHELTORENA.

MAN'L CASTANARES.

To his excellency the governor of the department of the Californias:

Camilo Ynitia, a resident of the jurisdiction of Sonoma, on the frontier, before your excellency in due form of law represents, that for the last six years he has been in possession of the land named Olampali, of the extent of two square leagues; that he has established thereupon a house, garden, vineyard, and has also upon said land, cattle and horses and all things necessary for the cultivation of the same, and needing the title of property to the said land, some time since he transmitted the customary diseño, which, as he has been informed, has been mislaid in the office of the secretary of state.

Wherefore he prays that your excellency be pleased to order to be issued the title to the said land, offering to transmit the corresponding diseño.

MONTEREY, *Oct. 22d,* 1843.

At the request of the interested party.

M. G. VALLEJO.

Marginal decree.

MONTEREY, *Oct.* 21, 1843.

Let the secretary of state report.

MICHELTORENA.

Report of secretary.

MOST EXCELLENT SIR: The land petitioned for by the Indian Camilo Ynitia has been occupied by the property of the same since the date referred to, according to the reports that have heretofore been
384 made, wherefore he is worthy of the favor he asks, if your excellency should think proper to grant it.

Monterey, Oct. 21, 1843.

MAN'L JIMENO.

Orde rof gov'r.

MONTEREY, *Oct.* 21, 1843.

In accordance with the report, let the title issue, without the power of selling or alienating.

MICHELTORENA.

Decree of concession.

MONTEREY, *Oct.* 22*nd*, 1843.

In view of the petition with which this espediente commences, the foregoing report, with all other matters necessary to be considered, in conformity with the laws and regulation governing the matter, I declare the Indian ———

Copy of title.

Manuel Micheltorena, brigadier general of the Mexican army, adjutant general of the staff, governor, and comandante general of the department of the Californias:

Whereas the Indian Camilo Ynitia has petitioned, for his personal benefit and that of his family, the land known by the name of Olampali, bounded by the estero of the same name, by the Arroyo of San Antonio, and by the portezula of Novato—the necessary proceedings having been previously taken and the investigations made as
386 required by the laws and regulations governing the matter—by virtue of the authority conferred upon me, in the name of the Mexican nation, I have determined to grant to him the said land, declaring to him the ownership of the same, by these presents, subject to the approval of the most excellent departmental assembly, and to the following conditions:

1st. He may enclose it without prejudice to the crossings, roads, and servitudes; he will enjoy it freely and exclusively, devoting it to the use or cultivation which may be most convenient.

2d. He shall not sell or alienate it, neither shall he hypothecate it, impose upon it ground rent, bond, or mortgage, or any other incumbrance whatever, nor convey it in *mortmain.*

3d. He shall ask the proper magistrate to give him juridical possession by virtue of this title, by whom the boundaries shall be marked out, on the limits of which shall be placed, beside the monuments, some fruit trees, or forest trees of some utility.

4th. The land of which donation is made is of the extent of two square leagues, a little more or less. The judge who may give the possession will cause the same to be measured in accordance with the ordinance; the sobrante which may result to remain to the use of the nation.

5th. If he violate these conditions, he will lose his right to
387 the land, and it will be denouncable by another.

Wherefore I order that this title, being held as firm and valid, registry be made in the respective book, and that the same be delivered to the interested party for his security.

Given in Monterey on the 22nd of Oct., 1843.

A correct translation of original espediente, No. 320, in which the Indian Camilo petitions for the place called Olompali.

R. C. HOPKINS.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

The within translation is admitted to be correct, being certified by Mr. Hopkins.

WM. H. SHARP, *U. S. Dist. Att'y.*

388 *Traced copy of map of the ranch "Nicasio," filed by claimant.*

(Here follows map, marked original, page 389.)

391 OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed page of tracing cloth, numbered from one to —, inclusive, exhibit a true, full, and correct copy of an original map taken from an espediente entitled "Espediente promovido por los ciudadanos Pablo de la Guerra y Juan Cooper, en pretencion del terreno nombrado Nicasio," as the same appears among said archives.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this 7th day of Aug., 1861.

E. F. BEALE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS,
Keeper of Archives.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

392 *Traced copy of juridical possession given Fernando Feliz.*

1844.

Escritura de venta que hace Fernando Feliz en favor de Dn. Jacobo P. Leese.

Senor Juez de 1*a Just'ca:*

Fernando Feliz, vecino de esta jurisdiccion dueño del rancho de Nobato, como proceda mejor aro ante V. parezco y digo q como consta del titulo y presente, con la solemnidad y juramto. necesario tengo en mi aho rancho dos sitios de ganado mayor debajo de los linderos q espresa d'ho titulo y porqe. necesito pa. q en todo tiempo conste hasta donde llegan y si me prejudican ó perjudico á alguno de los circunvecinos á ellas; se ha de sirvir imander q precedendo las diligencias acostumbrados de identidad, vista de ojos y reconocim'to se proceda con citacion de los circunvecinos à la medida de mis d'has tierras pa cuyo efecto nombro desde ahora y pa. cuando el caso llegue pr. medidor á D' Anto. Ortega, vecino de esta jurisdiccion, inteligente en esta materia y q los demas q fueren interesados nombran otros medidors pr. un parte y se procedad a dhas medidas.

P. T. A. v suplico se sirva mandar hacer como llebo pedido, y fecho q ha se me devuelven d'hos recandos con las diligs. originals q. se hicieren pa. enguarda de mi dro este escrito y todo lo necesario, etc., dispensandome el usó del papel comun pr. falta del sellado correspond'te.

393 S'n Rafael, 9 bre 101842.

FERNANDO FELIZ.

En el pueblo de S'n Rafael a los once dias del mes de 9 bre de mil ochocientos cuarenta y dos ante mi el c'no Salvador Vallejo, juez de esta jurisdiccion se leyó esta peticion y vista la habe pr. presentada con el documto. q espresa y mando q con citacn. de los circunvecinos se haga informacion de identidad, vista de ojos y reconocimto. de dhas tierras à q esta pronto à asistir personalmte. asi lo preveyó mandó y firmó con los de me assia.

SALVADOR VALLEJO.

Assa: CAYETANO JUARES.
FRANCO. HIG'A.

En el espresado pueblo à las doce dias del mes de 9 bre de mil ochocientos cuarenta y dos yo el referido juez con los de me assia. pa. proceder à la informacn. de identidad hice paracer ante mi al Cno. Anto. Ortege vecino de esta jurisdiccion de oficio labrador y casado del cual recibi juramto. q. hizo pr. Dios y là señal de la Cruz en forma, a cargo del cual promotio decirverdad y tiendo preguntado pr. el conociemto. de las tierras y parages terminos y linderos pertenecientes al rancho de Nobato dijo q hace ocho años es vecino de esta jurisdiccion y sabe qu las tierras pertencets. a dho rancho, son del cno. Fernando Feliz y tiene pr. linderos el Arroyo de Anichi, el portezuelo del rancho de

Juan Martinez, el Corte de Madera de Pocaytacala y el serro de
394 Olampali, las cual ha visto y reconocido varios veces y q. desde q. las posu el referido Fernando Feliz las ha cultivado y han partado en ellos sus ganados y pa. prueba de lo q. tiene dicho esta pronto à ir a dhas tierras con el parte juez y señalarle los parajes terminos y linderos donde llegan y q. lo q. lleva dicho es la verdad pr. el juramto. qe tiene hecho en q. se afirmó y ratificó declaró ser de 50 anos de edad y q. las leyos generales no le tocan y firmó con el prte. juez y los de assia. segun dro.

ANTONIO ORTEGA.
SALVADOR VALLEJO.

Assa: CAYETANO JUARES.
FRAN'CO HIG'A.

A continuacion hize comparecer al ciudo. Gregorio Briones vecino de esta jurisd'on y su declaras'n es identica à la anter'r firmó commigo y los de ass'a segun dro.

GREGORIO BRIONES.
SALVADOR VALLEJO.

Assa: CAYETANO JUARES.
FRAN'CO HIG'A.

En el mismo dia y mes y año, hize comparecer al Cno. Juan Martinez de la misma vecendad oficio y estado q los anteriores de edad de cuarenta y dos años su declaracion fue identica à la primera y firmó commigo y les de assia. segun dro.

SALVADOR VALLEJO.

Assa: CAYETANO JUERES.
FRAN'CO HIG'A.

Estando en el campo en el paraje nombrado, Arroyo de Anichi, termino de Nobato à las trece dias del mes de 9 bre de 1842, yo el juez actuando pr. receptoria con dos testigos de ass'a pr falta de escribano publico los testigos pr. mi ecsaminados preste. el ciudno. Fer-
395 nando Feliz dueño de d'has tierras, y ciudos. Gregorio Briones, Antonio Ortega, Man'l Cantua, y Juan Martinez, colindantes y circunvecinos procedi à ver y reconocer las tierras de dho rancho y pa. mayor claridad, puesto à cabelloó en compa de todas las partes y testigos referidos mandé à los susodichos me senalasen los parajes terminos y linderos de ellos, segun las señales que han declarado en sus deposiciones, asi lo hicieron y yo el repetido juez los vi y reconoci con ellos, los de mi assio. y papeles presentados y pa. qe. conste se puso pr. diligia. y lo formé con los de mi assia. y demas qe. supieron.

Inmediatam'te yo el juez p'a proceder á las medida, despues de las notaficaciones y ratificaciones de estilo presente el Ciud'os Fernando Feliz y circunvecinos á d'has tierras hize comparacer ante mi y los de ass'ia à los C. C. Antonio Ortega y Gregorio Briones, medidor nombrador à quienes mandé tomasen un cordel de hilo y midieren cincuenta v'as con v'a de medir de cuatro palmos castellanos y en efecto los referidos medidores en mi presencia medieron en an cordil torecido y bien tirado con ara de media Castellano Mexicana y cellada, el num'o d'ho de cincuenta v'as y le mande procedieren á la medida

396 de dos sitios de ganado mayor q. poco mas o menos pertenecen a rancho d'ho segun el titulo y diseño presentado y dieron principio á d'ha medida desde el Arroyo de Anichi hasta el Portezuelo de Juan Martin donde llegaron con dos cientos cordales de cincuenta v'ar el interesado levanto alli un monton de piedras en señol de mohonera de este punto siquiendo la medida hacia el corte de Madera Pacaytacala donde llegaron con cien cordeles de paso la correspond'te señal de mohonera y v. prosiguio midiendo con el mismo numero de cordeles hasta el terro de Olampali donde poso la ult'a mohonera y dandose p'r concluida la medida del terreno q comprende el rancho de Nobato resulta q forma una extencion de cinco mil v'as de latitud, y diez mil de longitud y declazazon los enunciados medidores esta enterado el c'no Fernando Feliz de las tierras q le correponden segun el titulo y diseño q se hallan á la cabeza de este esped'te p'r todo lo cual y en señal de verdadera posesion y ceremonial acostumbrado arranco piedras y yerbas y tiro p'r los cuatro vientos en manifestac'n de legal y legitima posesion q tomo p'r si en consecuencia el repetido S. juez mando q'e p'a mas claridad de los linderos q van espresador hiziere á su costa y mansion unas mohoneras de piedra y cal, en altos demas de V'a p'a q'e en todo tiempo conste reconozcan y queden pr. terminos y linderos de sus tierras p'r los demas circunvecinos de ellos y de haberse ejecutado d'has medidos quieta y pacificam'te sin contradiccion
397 de persona alguno lo pidio p'r testimonio y yo el referido s'or juez con los de mi ass'a lo doy de haber pasado como dicho es y, q. las espresadas medido han sido practicados á todo el leal saber y entender de los medidores segun depusieron sin dolo paude ni engaño y p'a mas sequridad y ratificac'n del juranto q tienen hecho firmeron conmigo y los de mi.

ANTONIO ORTEGA.
SALVADOR VALLEJO.
FERNANDO FELIZ.

Ass'a: Gregorio Briones.
Ass'a: Fran'co Hig'a.
Ass'a: Cayetano Juares.

En vista de hallarse concluido este esped'te en q. consta habersele dado posesion juridica del rancho nombrado Nobato, al Ciud'no Fernando Feliz q la tomō p'r si entregamente á la parte el original p'a los usos q le convengan, con los documentos q presenta el Ciud'no Salvador Vallejo, juez de esta jurisd'on actuando p'r receptoria, con dos testigos de ass'ia p'r falta de escribano publico asi lo prové mande y firme a las quince dias del mes de Nov'bre de mil ochocientos cuarenta y dos.

SALVADOR VALLEJO.

Ass'a: Cayetano Juares.
Ass'a: Fran'co Hig'a.

Office of the Surveyor General of the United States for California.

I, E. F. Beale, surveyor general of the United States for the State of California, and as such having in my office and in my charge and

custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers
398 of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the 9 preceding and hereunto annexed pages of tracing cloth, numbered from 1 to 9, inclusive, exhibit a true, full, and correct copy of part of an original document entitled, "1844, escritura de venta que hace Fernando Feliz en favor de D'n Jacobo P. Leese," as the same appears among said archives in case No. 68.

In testimony whereof, I have hereunto signed my name officially and caused my seal of office to be affixed, at the city of San Francisco, this 19th day of Aug., 1861.

[SEAL.] E. F. BEALE,
U. S. Surveyor General for California.

Examined and found correct.

R. C. HOPKINS.

Fndorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Translation of judicial possession given Fernando Feliz, Nov., 1842.

To the judge of first instance:

I, Fernando Feliz, resident of this jurisdiction, owner of the rancho of *Novato*, appear before you in the most favorable manner, and represent, that, as appears by the title which I present with the necessary formalities and oath, my aforesaid ranch contains two sitios de ganado mayor, (two square leagues,) within the boundaries described in said title; and as I find it necessary that it should appear in all future time which are the said boundaries, and whether I trespass upon my neighbors or they upon me, you will be pleased to
399 order that, the usual examination of identity, ocular view, and recognition being previously made, the coterminous neighbors (colindantes) be cited and the measurement of my lands aforesaid be proceeded with, for which purpose I now name for surveyor, (when the time may arrive,) Don Antonio Ortega, resident of this jurisdiction, and skillful in such matters; and let the other persons who may be interested appoint a surveyor on their part, and the aforesaid measures be proceeded to.

I therefore pray you have the goodness to do as I request, and that the above-mentioned examinations being made, they may be delivered to me with the original document which may be made out, this writing, and whatever else may be necessary for the security of my right, excusing me for useing common paper, for want of that of the corresponding stamp.

San Rafael, Nov. 11th, 1842.

(Signed) FERNANDO FELIZ.

In the town of San Rafael, on the eleventh day of the month of November, one thousand eight hundred and forty-two, before me,

citizen Salvador Vallejo, magistrate of this jurisdiction, this petition was read, and having been seen, it was admitted with the document therein mentioned, and I ordered that, having summoned the* (colindantes,) (examination,) be made of identity, occular inspection, and reconoissance of said land, at which I am ready to assist personally. I thus directed, ordered, and signed with those of my assistance.

Coterminous neighbors, information.

400

(Signed) SALVADOR VALLEJO.

Assisting witnesses:

(Signed) CAYETANO JUAREZ

(Signed) FRANCISCO HIGUERA.

In the aforesaid town, on the twelfth day of the month of November, one thousand eight hundred and forty-two, I, the magistrate before mentioned, with those of my assistance, in order to proceed with the* (examination) of indentity, caused to appear before me, citizen Antonio Ortega, resident of this jurisdiction, by occupation a laborer, and married, to whom I administered an oath, which he made by God and the sign of the cross, in due form promising to speak the truth; and being asked for the description of the land and places, limits and boundaries, pertaining to the rancho of Novato, he said that he has been a resident of this jurisdiction eight years, and knows that the lands pertaining to said rancho belong to citizen Fernando Feliz, and that he considers as the boundary the arroyo of *Anichi*, the *portezuelo** of the rancho of Juan Martinez, the *corte de Madera* (saw pit) of *Pacaytacala*, and the peak of *Olampali*, which he has seen and examined several times; and that since the aforesaid Fernando Feliz has owned them, he has cultivated them, and his cattle have pastured on them; and in proof of what he has said he is ready to go* with the magistrate and show him the places, limits, and boundaries; and that all that he has said is true by the oath which he made, and which he confirms and ratifies. He declares that he is 50 years old, and not disqualified by the laws, (do not affect him;) and he signed with the present magistrate and those of his assistance, according to law.

Information.

Gap.

401

To the said lands.

Where they reach to.

(Signed) ANTONIO ORTEGA.

(Signed) SALVADOR VALLEJO.

Assisting witnesses:

(Signed) CAYETANO JUAREZ.

(Signed) FRANCISCO HIG'A.

B.

In continuation, I caused to appear citizen Gregorio Briones, a resident of this jurisdiction. His declaration was the same as the preceding, and he signed with me and those of assistance, according to law.

(Signed) GREGORIO BRIONES.

(Signed) SALVADOR VALLEJO.

Assisting witnesses:

(Signed) CAYETANO JUAREZ.

(Signed) FRANCISCO HIG'A.

On the same day, month, and year, I caused to appear citizen Juan Martinez, of the same residence, occupation, and condition as the preceding, aged forty-two years; his declaration was identical with the first, and he signed with me and those of my assistance according to law.

(Signed) SALVADOR VALLEJO.

Assisting witnesses:

(Signed) CAYETANO JUAREZ.
(Signed) FRAN'CO HIG'A.

Being in the fields in the place named Arroyo of *Anichi*, a boundary of *Novato*, on the thirteenth day of the month of November,
402 1842, I, the magistrate, for want of a notary public, acting in virtue of my office with two assisting witnesses present, the witnesses examined by me, citizen Fernando Feliz, owner of said land, and citizens Gregorio Briones, Antonio Ortega, Manuel Cantua, and Juan Martinez* colindantes and neighbors, I proceeded to see and reconnoitre the lands of said rancho; and for (greater clearness,†) being on horseback, in company with all the parties and witnesses before mentioned, I ordered the aforesaid (witnesses) to point out the places, limits, and boundaries of the lands as they described them in their depositions. They did so, and I, the magistrate, and those of my assistance, saw and examined them, and the document presented; and in testimony I made official note of it, which I signed with those of my assistance, and the others who knew how.

* Coterminous residents.

† The better understanding.

(Signed) GREGORIO BRIONES.
(Signed) SALVADOR VALLEJO.
(Signed) FERNANDO FELIZ.

Assisting witnesses:

(Signed) CAYETANO JUAREZ.
(Signed) FRANCISCO HIG'A.

Immediately I, the magistrate, for the purpose of proceeding to the measurement after the usual notification and ratification, citizen Fernando Feliz and the colindantes of said lands being present, caused to appear before me and those of my assistance, citizens Antonio Ortega and Gregorio Briones, appointed (surveyors‡,) and I ordered them to take a rope of thread (hemp) and
403 measure (on it) fifty varas with a vara measure of four *palmos cortellanos;* and the said (surveyors §) did in my presence, with a Spanish Mexican stamped vara measure, mark off the aforesaid number (viz: fifty) of varas on a twisted and well-stretched rope, and I ordered them to proceed to measure two square leagues, (*dos sitios de ganada mayor,*) which a little more or less pertain to the above-named rancho, according to the title and map presented; and they commenced the measurement from the arroyo of *Anichi* to the ‖ portezuelo of Juan Martin, distant two hundred cordeles of fifty varas each. The person interested raised at that place a heap

‡ Measurers.

§ Measurers.

‖ Gap

* Landmark. of stones as a (bound*) and from thence they continued the
† Landmark. measurement one hundred cordeles to the "*corte de madera*"
of *Pacaytacala*, and the corresponding (bound†) was placed.
‡ Landmark. Thence the measurement was continued the same number of cordeles to the peak of (Olampali) where the last (bound‡) was placed; and the measurement of the land contained in the rancho of *Novato* being considered as concluded, it results that it has an extent of five thousand varas in width, and is ten thousand long; and the aforesaid (surveyors§) declared that citizen Fernando Feliz had been made to know the lands which belong to him according to the title and map which appears at the head of this espediente. For all which, and as a sign of true possession and customary form, he pulled up grass and stones and threw them to
404 the four winds, in manifestation of the legal and legitimate
‖ For himself. possession which he himself took. ‖ The magistrate consequently ordered that, for the greater clearness of the boundaries herein described, he should make, at his own cost and expense, landmarks of masonry more than a vara high, that in all future time they may appear, be recognized, and remain as limits and boundaries of his land by and for their colindantes, and in testimony that the said measurements were performed quietly and peacably without opposition by any person. He asked for a testimony, and I, the magistrate, with those of my assistance, gave it, that everything was done as has been said, and that the measurements referred to were
¶ Measurers. made to the best of the knowledge and belief of the (surveyors ¶) as they deposed without deceit or fraud; and for greater security and the ratification of the oath they have made, they signed with me and those of my assistance.

(Signed) ANTONIO ORTEGA.
(Signed) GREGORIO BRIONES.
(Signed) SALVADOR VALLEJO.
(Signed) FERNANDO FELIZ.

Assisting witnesses:
(Signed) CAYETANO JUAREZ.
(Signed) FRAN'CO HIG'A.

This espediente being finished, by which it is shown that juridical possession of the rancho named Novato has been given to citizen Fernando Feliz, who took it personally, let this original be delivered to the party interested for the uses he may deem proper, to-
405 gether with the documents he presented. Citizen Salvador Vallejo, magistrate of this jurisdiction, acting, for want of a notary public, in virtue of his office, with two assisting witnesses, thus directed, ordered, and signed, on the fifteenth day of the month of November, one thousand eight hundred and forty-two.

(Signed) SALVADOR VALLEJO.

Assisting witnesses:
(Signed) CAYETANO JUAREZ.
(Signed) FRAN'CO HIG'A.

Endorsed as follows: No. 68.—Assignees of Bezar Simmons, Novato, B.—Translation of espediente, title, possession, and sales.
Filed in office Feb'y 24th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in record of Ev., vol. 15, page 73.

GEO. FISHER, *Sec'y.*

Ex'd. R. V.

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and, as such, having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also
406 the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the seven preceding and hereunto annexed pages, numbered from one to seven, inclusive, exhibit a true, full, and correct copy of a portion of a document marked "B," translation of espediente, title, possession, and sales, together with the endorsements thereon, in case No. 68 on the docket of said board, the original of which is on file in this office.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this eighteenth day of July, 1861.

E. F. BEALE,
U. S. Surveyor General for California.

Endorsed: Filed Nov. 19, 1861.

W. H. CHEVERS, *Clerk.*

Two petitions of B. Bojorquez, for rancho "Laguna de San Antonio."

Sello cuarto, dos reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterrey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

[SEAL.] MICHELTORENA.
PABLO DE LA GUERRA.
Por anso. del adm'or, GUILLO. ED'O HARTNELL.

407 E. S. GOBERNADOR: Bartolome Bojorques vecino de esta frontera del norté, ante V. E. con el mas profundo respeto hago presente.

Qué como consta pr. el documento adjunto el sor. director de colonizacion D. Mariano G. Vallejo, se ha servido concederme desde el año de 1837 el terreno conocido con el nombre de *Laguna de S. Antonio* q. comprenda seis sitios entra los linderos qe. demarca el adjunte diseño esto es; al S. E. con Juan Martin, al N. O. con las dos Piedras;

al S. O. con los *Tomales*, y al N. E. con Juan Miranda Teniendo yá siete años de ocupacion en d'ho parage habiendo construido en el varios, fincos y descando aseguras mi propriedad á V. E. ruego q. vistos los anteced'ts á q. me refiero se sirva mandar seme otorgue el titulo de concesion en formia pa. q asi mismo pueda complir con las demas requisitos de ley y asegura á mi crecida familia el unico recurso con q. cuenta pa. su subsistencia.

P. T. A. V. E. suplica se sirva mandar decretar como pido en lo q. recibire justicia y merced. Juro, etc.

Sonoma, Mayo 20 de 1844.

BARTOLOME BOJORQUES.

MONTERREY, *Ag'to* 1 *de* 1844.

Ynl'e el s'rio del despacho tomando antes otros si los tiene pr. necesaria.

MICHELT'A.

E. S. GOBERNADOR: Bartolome Bohorquez soldado retirado de la compania provincial de S'n Francisco y vecino de esta jurisd'on ante V. E. con el mas profundo respecto hace presente:

Que á causa de la distancia q. media entre este punto y esa
408 capital; donde no tiene ninguna relacion habia esperado pa. elevar a los manos de V. E. el prest'e memorial qe. se presentara uno ocasion muy oportuna pa. no esponer los docum'tos tan interesantes qe. tiene el honor de acompañar o en los qe. se halla cifrada la unica esperaza de la espon'te y su familia.

El año po. po. derigio el suplicante la adjunta instancia al E. S. General D. Manuel Micheltorena y no ha sido remitta por qe. tuvo á bien el sor. secretario del despacho de aquel tiempo pedir informes qe. solo se toman al tiempo de dar la posesion juridica pues refiriendose el interesado á *los linderos* de sus colind'tes sin espresas aquellas parace muy suficiente el informe qe. dio el alcalde de esta jurisd'con de qe. el terreno comprendido entre d'hos *linderos* era baldio y al dar la posesion juridica el juez q. lo hiziera habia de tomar los declaraciones de los colind'tes segun se ha observado constantem'te.

P. T. A. V. E. ruega se digue mandar sele otorgue el correspond'te titulo de concesion pa. poder con las demas requisitos legales dispensandoses el uso del papel comun pr. falta del sellado correspon'te.

Sonoma, Julio 29, 1845.

BARTOLOMÉ BOJORQUEZ.

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and, as such, having in my office, and in my charge and custody, a portion of the archives of the former Spanish and
409 Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the five preceding and

hereunto annexed pages of tracing paper, numbered from one to five, inclusive, exhibit a true, full, and correct copy of the original petitions of Bartolome Bojorques, taken from espediente No. 483, as the same appears among said archives.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco this 20th day of Nov. 1861.

E. F. BEALE,
U. S. Surveyor General for California.

Endorsed: Filed Nov. 23, 1861.

W. H. CHEVERS, *Clerk.*

Translation of the two petitions of B. Bojorques for rancho Laguna de San Antonio.

First petition of Bojorques.

To his excellency the governor:

Bartolome Bojorques, a resident of this frontier of the north, before your excellency, with the most profound respect, represents that, as is shown by the accompanying document, the señor director of colonization, Don Mariaño G. Vallejo, was pleased, in the year 1837, to concede him the land known by the name of "Laguna de San
410 Antonio," which comprises six square leagues, within the boundaries designated on the accompanying diseño, that is, on the southeast with Juan Martin, on the northwest with "Los dos Piedras," on the southwest with "Los Tomales," and on the northeast with Juan Miranda; having already occupied said place seven years, having made upon the same various improvements, and desiring to secure his property, he prays your excellency that, in view of the foregoing facts as set forth, to be pleased to order that the formal title of concession be delivered to him, in order that he may comply with the other requirements of the law, for the purpose of securing to his numerous family the only means which he can rely upon for their subsistence.

Wherefore he prays that your excellency may be pleased to order a decree, as he has asked, in which he will receive justice and favor, swearing, &c.

Sonoma, May 20th, 1844.

BARTOLOME BOJORQUES.

MONTEREY, *Aug.* 1*st*, 1844.

Let the secretary of state report, first causing reports to be made as he may think necessary.

MICHELTORENA.

411 *Second petition of Bojorques.*

To his excellency the governor:

Bartolome Bojorques, a retired soldier of the presidial company of San Francisco, and a resident of this jurisdiction, before your excel-

lency, with the most profound respect, represents that, on account of the distance between this point and the capital, with which place he has no business relations, he had awaited a suitable opportunity to present the present memorial to your excellency so as not to risk the loss of such important documents as he has now the honor to forward to your excellency, and upon which is based the only hope of himself and family.

In the year last past the petitioner directed the accompanying petition to the Señor General Don Manuel Micheltorena, which has not been acted upon because the señor secretary of state thought proper to require such reports as are only required at the time of giving juridical possession. Since the petitioner referred to the boundaries of his colindantes without expressing them, the report given by the alcalde of this jurisdiction, that the land within said boundaries was vacant, appears to me to be altogether sufficient, and at the time of giving the possession, the judge giving the same would take the testimony of the colindantes, according to the custom constantly observed.

Wherefore he prays your excellency to order the corresponding title of concession to be delivered to him, in order that he may be able to comply with the other requests of the law, excusing the use
412 of common paper for the want of that which has the proper stamp.

Sonoma, July 29, 1845.

BARTOLOME BOJORQUES.

The foregoing are correct translations made by myself from the original petitions of Bojorques, found in espediente No. 483 on file in archives.

R. C. HOPKINS.

Endorsed: Filed Nov. 23, 1861.

W. H. CHEVERS, *Clerk.*

413 *Deposition of R. C. Hopkins, on part of claimant, taken in open court on the 4th Feb'y,* 1862.

District court of the United States, northern district of California.

THE UNITED STATES
vs.
ELLEN E. WHITE.

SAN FRANCISCO, *Feb'ry* 4, 1862.

On this day, before the United States dist. court for the northern dist. of California, duly authorized to administer oaths, &c., &c., came R. C. Hopkins, a witness produced on behalf of the claimant, in case No. 346, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 558 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: Messrs. Howard & Crittenden, for the claimant; the U. S. att'y and P. Della Torre, for the U. S.

Question 1st. (By counsel for the claimant.) I have charge of the archives. I have brought with me several of the documents referred to in my previous, as having been written in different inks. Document No. 1, journal dep. state papers, Benecia, official correspondence and reports, p. 252, shows an alteration in the date apparently
414 in different ink.

No. 2 and 3 is in state papers, vol. 6, mission, pp. 612–619. The dates and signatures of all these document, and appear to be in different ink from the body. The latter is in the hand of Juan Castañeda, who was a clerk in his (Vallejo's) office, as appears from the records. Dates and signatures are in Vallejo's handwriting.

No. 4.—Dep., state papers, vol. IV, p. 453; letter from Vallejo to comandante of San Diego; body in handwriting of V. Prudon. It shows ink of two colors; heading and signature in a diff. ink from either; these last are by Vallejo. On espediente No. 171, the marginal order of reference by Alvarado, dated March 8, 1837, shows two kinds of ink; espediente 252, "Las Mariposas," the word Maripasas, in Alvarado's petition, appears to have been inserted in different ink from the rest of the document. There are great many other instances where different colored inks appear to have been used, and where the nature of the instrument forbids the idea of fraud.

There are papers in the archives that show where Bartolome Bojorques resided in 1839, 1841. Witness exhibits extracts of muster-rolls, which show him to have been encamped at San
415 Francisco, from March '39 to June '41; he appears to have gone to his rancho in June, '41.

It also appears from letters in archives that José de la Rosa was in Monterey on Feb'y 7, 1844; April 24th, '44; July 5th, '44; Aug. 21, '44; Sept. 17, '44; Oct. 26, '44.

Petition in case at bar exhibited.

I have heretofore said that the name of Ortega appears to be in José de la Rosa's handwriting. I did not mean to apply the remark to the rubric. The rubric is not that of José de la Rosa.

I have seen the same rubric attached to the name of Ortega in reports apparently signed by himself as administrador of the mission, &c. The rubric attached to his signature to his deposition taken before the board is similar, tho' not exactly alike. Also that attached to his signature to deed to claimant.

There is no book in the archives in which petitions, maps, and grants were recorded in compliance with the regulations. The only record evidence of grants is the espedientes on file, the books of Toma de Razon, the indexes by Jimeno and Hartnell, and the journals of the departmental assembly. There is no book of Tomar de
416 Razon for 1840.

It is admitted that M. Jimeno left California in 1853, and died in Mexico some years afterwards, without ever having returned to California.

R. C. HOPKINS.

Sworn to and subscribed in open court, before me, this fourth day of February, A. D. 1862.

W. H. CHEVERS, *Clerk.*

Endorsed: Filed February 4, 1862.

W. H. CHEVERS, *Clerk.*

Part of espediente of Bojorques.

S'or Comand'te G'r'al:

Bartolo Bojorques, radicado en S. Fran'co, antes V. S. como mejor conevenga digo; que habiendome resuelto à establuerme y radicarme en esta jurisdicion con mis bienes semovience y no teniendo en que venificarlo por falta de un terreno propio para el efecto solicito que V. S. me permita poner mis dichos bienes en el parage de Laguna de San Ant'o a la parte del poniente, cuyo terreno esta baldio y no pertenese a la propriedad de persona alguna. Por tanto.

A. V. S. suplico de sirva atenden esta solicitud de que vivire reconocido.

SONOMA, *Mayo* 17 *de* 1837.

Arruego del interesado.

GREGORIO BRIONES.

Bap. en papel comun no haber papel sellado.

417 SONOMA, *May* 16 *de* 1839.

Puede el interesado en esta inst'a poseer el paroje solisita en concepto deg. solicitaro del gob'o politico en titulo correspondiente entendiendose el presente decreto como int.

M. G. VALLEJO.

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, E. F. Beale, surveyor general of the United States for the State of California, and, as such, having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, as also the papers of the late board of commissioners to ascertain and settle the private land claims in California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed page of tracing paper, numbered from one to —, inclusive, exhibits a true, full, and correct copy of an original petition of Bartolome Bojorques, taken from espediente number "483," as the same appears on file among said archives.

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San Francisco, this 13 day of Jan. 1862.

[SEAL.]

E. F. BEALE,
U. S. Surveyor General for California.

418 Endorsed: Filed Feb'y 4, 1862.

W. H. CHEVERS, *Clerk.*

Translation of part of espediente of Bojorgues.

Señor Comandante General:

Bartolo Bojorques, established in San Francisco, before your *senoria* represents, that having resolved to establish himself in this jurisdiction with his self-moving property, and being unable to do so for the want of a piece of land suitable for that purpose, he asks that your senoria may permit him to place his said property on the place of the Laguna de San Antonio, on the western part, which land he believes to be vacant, and that it does not pertain to the property of any one.

Wherefore he prays that your senoria may accede to his petition, for which he will remain grateful.

SONOMA, *May* 17*th*, 1837.

At the request of the interested party.

GREGORIO BRIONES.

This is written on common paper, there being none sealed.

SONOMA, *May* 16*th*, 1839.

The interested party in this petition may possess the place which he solicits, with the understanding that he shall solicit the political government for the corresponding title, the present decree being understood as *ad interim*.

MNO. G. VALLEJO.

Correct translation from the original by—

R. C. HOPKINS.

Endorsed: Filed Feb'ry 4, 1862.

W. H. CHEVERS, *Clerk.*

419 *Opinion respecting claim.*

United States district court, northern district of California.

THE UNITED STATES
vs.
ELLEN E. WHITE, adm'x, &c. } No. 346.

SAN ANTONIO, *Aug.* 19, 1862.

The claim in this case having been confirmed by the board and by this court at a session held by the circuit judge, an appeal to the Supreme Court was taken, the decree of this court reversed, and the cause remanded for further proofs. In their final or supplementary opinion, the Supreme Court, after ordering the decree of this court to be reversed and set aside, say: "We do this that the district court may not be trammelled in their future consideration of this cause *on all its merits*, but without intimating any opinion as to the validity of the grant to Antonio Ortega. It is due to the Attorney General to say that, on the argument of this case, he challenged the grant as fraudulent, and it is because we do not think the whole evidence on

that point was fully developed on the former trial that this order is made."—(U. S. *vs.* White, 23 How., 255.)

The cause has thus been remanded to be considered "*de novo*" on all its merits by this court, untrammelled by the decision of the Supreme Court as to either the validity or the genuineness of the grant. I shall therefore examine into its merits precisely as
420 if it were now for the first time submitted for decision.

The documentary title, on which the claimant relies, consists of a sheet of paper containing a petition to the governor, a marginal order of reference, an informe, and a decree of concession. He also produces a map of the land solicited. The petition is in the name of Antonio Ortega, and is dated June 12th, 1840. The marginal order is in the handwriting of and signed by Alvarado, and dated June 20th, 1840. The informe is signed by M. G. Vallejo, and dated July 30th, 1840. The decree of concession is dated August 10th, 1840, and is as follows:

"In conformity with the information given by the military commander of the frontier of Sonoma, and in virtue of the faculties with which I am invested, I grant to Don Antonio Ortega the land petitioned for, with the understanding that in order to obtain the issuance of the respective titulo, and to regularly make up the necessary expediente, (by which the boundaries should be marked,) and the necessary proceedings be taken, he shall make a map as required by law, which he shall present without delay, together with this instancia, which shall serve him as security during the further proceedings indicated."

These documents are produced together with a map, which will hereafter be noticed, from the custody of the claimant. It is not pretended that they were at any time on file in the public archives; on the contrary, it is urged that from their own nature, and by
421 the terms of the order, that they be returned to the interested party, they could not properly have been archived.

The records, therefore, fail to afford any confirmation whatever of the genuineness of the grant, or, indeed, any trace of its existence. Of the evidence from the archives, relied on by the United States to disprove its genuineness, we will speak hereafter. It will be observed that the document above transcribed purports on its face to be a kind of preliminary or provisional concession, intended to serve as a security to the party, while the necessary proceedings required by the colonization laws were in progress. It contemplates and requires that a map shall be presented in order that the expediente shall be framed, by which the boundaries are to be designated, and which is to pass through the proper channels of business, ("correr las limites necessarias, Sevanes, Newman & Barettis sp. dic. by Valasquez, ap. verb correr,") in order that the grant "titulo" may issue.

It is plain, from the language of this decree, that the governor intended that the title should be perfected in the usual manner, and the concession returned to the party "for his security" was in no manner meant to operate as a final grant to the land.

The case thus bears a close analogy to those of Noe, (23 How., 315,) and of Alviso, (ib , p. 318.)

In the former case, which is nearly identical with the case at bar, the claim was respected on the ground that the grantee had
422 wholly neglected to take any steps towards the completion of his title, or the fulfillment by occupation and authorization of the obligations it imposed.

In the case of Alviso, the claim was confirmed, it appearing that, though the claimant had only a permission to occupy while the proceedings for the perfection of his title were pending, yet that he had improved and cultivated the land, and had resided upon it with his family since 1840, and since that year he had been recognized as its proprietor. On the occupation of the country by the U. S. forces, he or his representatives were found in the indisputed possession of the rancho; as was observed by the court, "no imputation was made against the integrity of his documentary evidence, and no suspicion exists unfavorable to the *bona fides* of his petition, or the continuity of his possession and claim."

Under the authority of these two cases, which, so far as the documentary evidence of title is concerned, closely resemble the case at bar, the decision of the latter must depend upon whether the genuineness of the title papers has been satisfactorily established; and if so, whether the inchoate right thus obtained has been, by a long continued occupation and cultivation, and the recognition of the claimants' rights, ripened unto an equitable title, which the United States are bound to respect. These two inquiries, though in their nature distinct, it will nevertheless be found most convenient to prosecute simultaneously.

423 It has already been observed that no trace of the alleged grant is found in the archives. The proofs of its genuineness consist in the production of the grant itself, aided by the depositions of Juan B. Alvarado, Antonio Ortega, (the grantee,) William Richardson, José de la Rosa, and M. G. Vallejo.

Ortega testifies to the genuineness of his own and of Alvarado's and Vallejo's signatures.

He states that after the making of the decree, and during the same year, he applied to Governor Alvarado for a full and formal title, but it was during a recess of the departmental assembly, and he could not obtain it. He further states that he did not occupy the land in person, but that his father-in-law, Miranda, occupied it for him in 1840. That Miranda placed his son there, who remained six years, having a hut there and fifty cows; that he applied to the governor, with the paper before mentioned, and presented a map; he then went to Oregon, leaving his papers with the governor. He subsequently states that he went to Oregon in '43, and remained there four years; that on his return he found Theodore Miranda was occupying the land, which he continued to do until 1848. He then went to the governor and obtained the papers which had been left with him.

He further states that he demanded the possession of the widow of Miranda, but she replied that the land belonged to her, and that she had a paper from Murphy and Leese, the alcalde of Sonoma.

424 William Richardson testifies that the land was granted to Ortega in 1840, but that it was not occupied by him in person;

it was occupied by the family of Juan Miranda, by virtue of a contract between him and Ortega, but shortly afterwards all the family left, except Theodore, who continued to occupy it, when he (the witness) was last there—(1850.) That he understood Miranda occupied for Ortega, from the statements of both of them.

Alvarado testifies twice before the board:

In his first deposition he merely states that his signatures are genuine, and written at their dates.

In the second deposition, he identifies the map produced by the claimant as the one presented to him in 1840 or 1841, and left with the petition and decree of concession in his hands for safe-keeping until 1848, when he delivered them up to Ortega.

In a third deposition, taken since the case was remanded, Alvarado states that Ortega presented himself to him only twice, and that on the second occasion, which was after an interval of six months or a year, he brought the petition and map which he left with him. But in this statement he is evidently in error, for the marginal order for an informe is dated at Monterey, June 20th, 1840. The informe of Vallejo is dated at Sonoma, July 30, 1840; and the decree of concession is dated at Monterey, August 10, 1840. This latter shows
425 that the map had not then been presented. It is evident that the petition must have been twice presented to the governor without the map, and the latter was afterwards added to it at some time subsequent to the date of its second presentation. The circumstance is of some importance, in connection with other facts relative to the map hereafter to be noticed.

M. G. Vallejo testifies that in 1838, or 1839, Ortega applied to him for permission to occupy the rancho; that he gave the permission, and immediately afterwards Ortega moved on to the land, taking with him his father-in-law, Juan Miranda and his family; that he built a house and corral, and stocked the place with horses and cattle; that he (witness) furnished the stock, and Ortega went on to cultivate the land. He afterwards obtained a grant from Alvarado about 1840.

This evidence, it will be observed, conflicts in its most important statements with that of Richardson and Ortega himself. Both of the latter assert that Ortega never occupied the land in person; that the cattle belonged to Miranda, and that the occupation did not commence until after the grant. Ortega makes no mention of any permission to occupy obtained from Vallejo. No such permission is produced, though it was usually, if not invariably in writing, nor does any witness pretend to have seen such a document. And what is still more decisive, the petition of Ortega to the governor is wholly
426 silent as to the fact that such a permission had been obtained from the director of colonization of the northern frontier, the mention of which would have strongly enforced his application, and in all probability obviated the necessity of referring the petition to the same Vallejo for his informe. In his report to the governor, Vallejo in like manner omits all mention of the circumstance that he had already given permission to the applicant to occupy the land, and of the equally important facts that Ortega had already built a house upon it, stocked it, and was residing on it with his family.

We may safely conclude that if Ortega, at the date of his petition, had already obtained a permission to occupy from the director of colonization; if he had "built a house and corral upon it, stocked the place with horses and cattle, and had gone on to cultivate a portion of it," his petition and the report of Vallejo would have contained some allusion to the circumstances.

José de la Rosa testifies that in 1844 Miranda applied to him to draw up a petition to the governor (Micheltorena) for a grant of the place called "San Antonio;" that he wrote the petition and presented it for Miranda to the governor, who postponed making the grant, *being otherwise occupied;* that a grant was written out in the secretary's office, but not signed on account of the outbreak of civil disturbances. De la Rosa also states that in 1839 Ortega ap-
427 plied to him, in Sonoma, to make a map of the place called "San Antonio," as he wished to apply to Gen. Vallejo for leave to occupy it; that he accordingly made the map for him, which is the one produced by the claimant. Afterwards, in 1840, Ortega procured him to write a petition to the governor for the same land, and *this map was presented to the governor with the petition;*" that Ortega obtained the permission from Vallejo, in 1839, to occupy the land; and he did occupy it, and was in the occupation of it when he presented his petition to Alvarado for the grant; that Governor Alvarado granted the land; he (witness) saw the grant a short time after the petition was presented, *in the house of Ortega on the rancho;* that Ortega left his family and Juan Miranda on the land when he went to Oregon, in order that he might not lose his right to it.

It is unnecessary to refer at length to the character of this witness, as disclosed by his own avowal that in 1844 he was endeavoring to obtain for Miranda a grant of lands which he knew had already been granted in 1840 to Ortega; or as established in the case of Luco *et als. vs.* The United States, and other cases, in which the unreliability of his statements, and those of several other of the claimant's witnesses, have been judicially declared by the Supreme Court. It is enough to say that nearly every line of his deposition in this case con-
428 tains a falsehood. He asserts that he wrote the petition of Miranda in 1844. The petition is in the archives, and is not in his handwriting. He asserts that he prepared a map for Ortega in 1839, which was presented *with his petition* in 1840.

The claimant's own title papers prove the contrary. He swears that Ortega obtained a permission from Vallejo to occupy the land, and that he did occupy it. In these statements he is contradicted by Richardson and Ortega himself. He asserts that he saw the grant in Ortega's house on the rancho. Ortega states that he never occupied the land in person, and that the house was Miranda's. He states that Ortega left his family on the land when he went to Oregon, in order to preserve his rights to it.

The evidence is conclusive that Ortega abandoned his wife on account of her infidelity; that he has never lived with her since, and that on his departure she went to her father's house to live.

The map referred to by that witness is that produced by the claim-

ant, and stated by Alvarado to have been handed to him, as required by the decree.

In the expediente of Juan Miranda, found in the archives, and of undoubted authenticity, a map is found, nearly a fac-simile of the one produced by the claimants. The two were evidently made by the
429 same person, and at the same time. The theory of the claimant is, that Miranda, in 1844, obtained a copy of Ortega's map and presented it with his petition. But Ortega's map was then, as the claimant alleges, in Alvarado's private custody, and was not accessible to Miranda; and, besides, the twomaps bear unmistakable evidence of having been prepared at the same time. There must, therefore, have been prepared, if the claimant's theory be true, two maps for Ortega in 1840, one of which was presented to the governor, and the other subsequently passed into the hands of Miranda. If this be so, how happens it that De la Rosa speaks of having prepared only one map. He would hardly have forgotten the circumstance that when he presented Miranda's petition to the governor he also presented one of the maps prepared by him for Ortega five years previously.

The character of this witness and the nature of his testimony is such that it is a waste of time to consider it; but (he is the claimant's witness) it is just to observe that his evidence is, on the point last referred to, inconsistent with the claimant's own theory of the case.

The above are all the witnesses on the part of the claimant who testify directly and of their own knowledge to the execution of the grant. I shall hereafter advert to other proofs adduced to corroborate and confirm these statements

The United States have produced, from the archives, various
430 expedientes relied on to show that the government, long after the date of the alleged grant to Ortega, treated the land as public, and subject to grant, and that it was by all his neighbors considered to belong to Juan Miranda. These documents are:

First. The expediente of Juan Miranda. This expediente is found in the archives, duly numbered and entered on Jimeno's index. Its authenticity is unquestionable. It consists of—

1. A petition of Miranda, dated Feb. 21, 1844.

2. A certificate by Jacob P. Leese, alcalde of Sonoma, that the land had been occupied several years, and that it did not belong to any pueblo or corporation. Dated Feb. 20, 1844.

3. A report by Jimeno, dated May 2, 1844, that the land had been occupied for four years by the party interested, by cultivation, and by having a house thereon, with all his goods; and that it does not belong to any one in particular.

4. An order that the title issue, signed by the governor, and dated May 30, 1844.

5. A decree of concession, dated Oct. 8, 1844, declaring Juan Miranda owner of the place called Arroyo de San Antonio, and directing the corresponding title to be made out and entered in the respective book, and the espediente to be sent to the departmental assembly for its approval.

6. Two copies of the formal grant or titulo, dated Oct. 8, 1844,

431 but unsigned; these were evidently made out in pursuance of the governor's order; one to be delivered to the party, and the other to be retained as was customary in the office, and attached to the expediente.

It is not contended that the grant to Miranda was consummated by the delivery of the title paper. What was the cause of its non-delivery cannot be ascertained with certainty.

The claimant supposes that the proceedings were suspended by the governor because the previously acquired rights of Ortega were brought to his notice; but of this there is no proof; and admiting that Ortega had obtained in 1840 the concession now produced by the claimants, it is highly improbable that that fact was known to the governor, or had any effect to stay the issuance of the title to Miranda.

The papers of Ortega were not in the archives. Those records contained no trace of any title to the land acquired by him. He had left the country, abandoning his wife and family, under circumstances rendering his speedy return improbable. Miranda was reported both by Leese and Jimeno to have been in occupation of the land for several years. He was considered its owner by all his neighbors, as will be presently shown by other expedientes from the archives.

Alvarado, with whom Ortega's papers were deposited, makes no mention of having apprised Micheltorena of their existence. The alcalde of the district was ignorant of them, and it is not easy to conjecture by whom the information could have been furnished to
432 the governor, or from what quarter a remonstrance against the grant to Miranda could have come. But it may safely be assumed that if such remonstrance had been made, we should have found it among the papers in the expediente. The fact that the proceedings had been suspended for that reason would not have been unknown to Jimeno, and yet that officer includes this expediente in his list as of the number of those "concedidos" or granted.

The reason given by Francisca Miranda, the wife of Ortega, for her father's not obtaining the grant is, that he was taken sick and could not attend to it.

José de la Rosa, the claimant's witness, distinctly avows that Micheltorena made no objection to granting the land, on the ground that it had already been granted Ortega, and he states that it was not signed on account of the outbreak of civil disturbances.

It is a matter of history that the revolution which terminated in the overthrow of Micheltorena commenced in the fall of 1844. It is proved in this case that Miranda died in 1845. It may well be, therefore, that the disordered state of public affairs, and the death of Miranda shortly after the commencement of the troubles, may have been the reason why the grant was not obtained.

But, at all events, the proceeding advanced far enough to show that the governor was willing to grant the land, and that he, Leese,
433 the alcalde, and Jimeno, the secretary, acted in total ignorance or entire disregard of the alleged rights of Ortega.

But the Miranda expediente seems to disclose another fact of some importance with relation to the occupation of the rancho. Miranda states in his petition that "for more than four years he had been in

possession of a sitio on the arroyo de San Antonio, which was provisionally granted to him by Señor Don Guadalupe Vallejo, the papers in relation to which concession, it seems, have been mislaid; that although he has endeavored to recover them, they have not been found, for which reason he represents anew, saying that on the said place are maintained the regular number of flocks and herds and the requisite cultivation."

We have already seen that Vallejo and De la Rosa swear that the provisional concession or permission to occupy was given to Ortega, but Ortega makes no mention of it, nor does his petition, when it would hardly have been omitted. If it be true, it is extraordinary that Miranda should have ventured to assert to the governor that the concession had been made to him; and it is still more extraordinary that Leese, the alcalde of Sonoma, and residing in the same village with Vallejo, should have failed to correct the misstatement, and have certified that the tract had been occupied several years by the interested party. Jimeno, too, appears either to have adopted without suspicion the statements of the petition, or else to have reported
434 on his own knowledge; for he certifies that "the interested party has occupied the land he claims for four years by cultivation, and by having a house thereon, with all his goods," facts which he could not have derived merely from the certificate of Leese.

That the rancho was originally occupied by Miranda, under a provisional concession or permission by Vallejo, is positively sworn to by Martin, the grantee of the neighboring rancho of Novato, and by Remon Mesa, who says that he occupied it by putting about three hundred head of cattle upon it, about thirty wild mares, and some tame horses, and by building a house, a corral, etc.

On his cross-examination he states that he saw these cattle delivered to Miranda by Salvador Vallejo, and branded by Miranda with a brand he had made at a blacksmith's shop.

It is true that the facts testified to by this witness occurred at a time when he was only twelve or thirteen years old, but he is in some degree corroborated by Peter T. Sherrebeck, who swears that in 1843 there was produced to him, as inspector of hides at San Francisco, hides from the Miranda rancho branded "J. M."—the Miranda sign.

José Santos Berryesa, who lived in Sonoma from 1837 to 1849, states that during all that time he never knew the rancho claimed by anybody but Juan Miranda, or occupied by any one but him
435 and his family. He also swears that he certainly occupied the rancho before the year 1840.

To the testimony of these witnesses must be added that of Francisca Miranda and that of G. A. Nye, the first of whom testifies that her father and brother first obtained their right to the rancho from Vallejo for the purpose of procuring a title from the government; and the second, that Miranda was living in 1838 on his rancho, and that he saw in his possession a document signed, he thinks, by Gen. Vallejo.

To the proofs thus afforded by the expediente of Miranda, the statements, and the silence of Ortega, and the evidence of these numerous witnesses, the claimant opposes the unsupported declaration of Mariano G. Vallejo and of José de la Rosa.

The preponderence, both of proofs and probabilities, is thus clearly in favor of the truth of the statements contained in Miranda's petition, and we are compelled to conclude that the permission to occupy was given to him and not to Ortega, and that under it he entered on the land and stocked and cultivated it as his own.

We have heretofore referred to the fact that the map found in the Miranda expediente and that produced by the claimant were evidently prepared by the same person at the same time; and various
436 reasons were adduced for supposing that Ortega could not have presented to the governor in 1840 the map now produced by the claimant.

The petition of Miranda affords an important corroboration of this view.

The petition of Ortega describes the land as bounded "on the south by the rancho of Camilo, on the north by the Roblar de la Miseria, on the east by the Estero de Petaluma, and on the west by the Laguna de San Antonio."

On the map alleged to have been presented by Ortega to indicate this tract, neither the "Roblar de la Miseria" nor the "Rancho de Camilo" are laid down, at least those names nowhere appear upon it, as would have been most natural if it had been drawn subsequently, and so as to conform to the description in the petition. On the other hand the description of boundaries in the Miranda concession entirely conforms to the map, and is evidently taken from it.

The non-conformity between the description in Ortega's petition and the map he alleges he presented to indicate the land solicited thus afford a strong argument against the truth of his and Alvarado's statement that the identical map now produced was presented in 1840
437 in obedience to the governor's order in the decree of concession.

The United States have also produced a grant to B. Bojorques with the expediente. Both in the petition dated August, 1844, and the grant dated November, '45, the "lands of Juan Miranda" are mentioned as one of the lands solicited.

They also produce the expediente of J. N. Padilla, another colindante. In his petition dated November, 1844, and the map that accompanied it, the "lands of Juan Miranda" are mentioned as a boundary; and Vallejo himself, to whom the petition was referred, reports, "the subscriber believes that the boundaries, with the rest of the rancho, are the same as those mentioned in the petition."

If Vallejo knew that he had made provisional concession to Ortega of the lands described in the petition as those of Juan Miranda, that Ortega had subsequently obtained a grant for them, and that Miranda was occupying them as his tenant, it is strange that he did not correct the misdescription in Padilla's petition.

In the diseño of the rancho of Olompali the same lands are again laid down as those of Juan Miranda.

The evidence afforded by these espedientes may not be sufficient to demonstrate that Miranda obtained a grant, nor perhaps conclusively to show that he was not occupying the land for Ortega;
438 but they establish beyond question that his neighbors on all sides regarded him as the owner of the land, and occupying it

in his own right. If Ortega's present pretension be true, it is strange that no one of the colindantes was sufficiently informed of the facts to describe the land as his, and not Miranda's.

On the other hand, the claimant has shown that the papers produced by him were in existence at least as early as 1849, when they were transferred to Father Brouillet, from whom the claimant derives title. He has also proved that in 1845 and 1846, while in Oregon, Ortega frequently spoke to Father Accolti and others of owning a rancho in California, a portion of which he desired to give to the father in consideration that his children should be educated.

It appears, too, that Father Brouillet, before taking his conveyance from Ortega, was informed by Alvarado and Vallejo that the papers were genuine and the title valid; but these declarations have no importance, except so far as we may suppose Alvarado and Vallejo unwilling to practice a fraud upon a priest of their own church. How far they would have been affected by that consideration, it is not easy to determine.

The claimant has also produced, as witnesses, Juan Bojorques and John Walker.

439 The first of these swears that he knew of Ortega's owning the rancho as early as 1841, and that he was in possession of it in 1839, when he had a small house on it.

But in this last statement he is unfortunately contradicted by Ortega himself, who states that he did not occupy the land in person, but that Miranda occupied it for him, in 1840. And if, in 1841, Juan Bojorques knew that Ortega owned the rancho, it is strange that his father, Bartolome Bojorques, in 1844, described it in his petition and map as the land of Juan Miranda.

John Walker testifies that Ortega told him, in 1843, that he owned the rancho, and that it was generally reported in Sonoma to belong to him. He "never heard it denied or contradicted."

But against this statement we have the fact that three colindantes, who would naturally be best informed as to the ownership of lands adjoining their own, describe the land as that of Miranda, in apparent ignorance of any rights of Ortega. And Leese, the alcalde of Sonoma, gives his certificate of vacancy, in 1844, to Miranda, when the latter applied for the land.

Some reliance is placed by the claimant on the fact that Theodore Miranda was present, and made no opposition, when Ortega,

440 in 1849, put Father Brouillet in possession. But this circumstance seems unimportant. Theodore Miranda had no title papers to the land, his father, as before explained, having failed to obtain any. He seems to have been discontented with, though not to have actually opposed, Ortega's proceedings; and the inference that he recognized Ortega's title seems conclusively rebutted by Ortega's own statement that, on his return from Oregon, he demanded the possession of the land from Theodore Miranda's mother, which the latter refused, claiming that the rancho was her own.

To meet the evidence furnished by the espedientes which have been referred to, the claimant has produced the record of judicial possession of the neighboring rancho of Novato, in which the name of Ortega oc-

curs, among others, who are spoken of as "colindantes and circunvecinos,"

But it does not appear from this record whether Ortega was, as spoken of, a "colindante" or a "circunvecino." If as a "circunvecino," he was only called a resident of the neighborhood—a term which might had been applied to him if he were residing in Sonoma, or been a "vecino de esta jurisdiccion."

That he could not have been a "colindante," or coterminous proprietor, is evident just from the fact that he was appointed as a measurer of the Novato rancho—a duty not legally or usually
441 assigned to neighbors directly interested in the question of boundary; and secondly, from the fact that the rancho del Arroyo de San Antonio, claimed by Ortega, is not colindante with the Novato rancho, for the Olampali lies between them

The claimant has also referred to a passage in the work of Duflot de Maufras, a French traveller, who, in the years 1840, 1841, and 1842, visited this country, and in 1844 published, at Paris, an account of his explorations. In his description of the country to the north of the bay of San Francisco, he enumerates various ranchos, and, amongst others, those of "Ortega, Martin, Petaluma, the Vallejos," etc., etc. It of course does not appear from whom Maufras obtained his information. His statements may, perhaps, be accepted as proof that he was told by some one he thought reliable, that Ortega owned a rancho in that vicinity. But such information, obtained and repeated by a traveller, can hardly be received as proof of the fact, especially when we have the incontrovertible evidence furnished by the expedientes of Miranda, and of three other adjoining ranch owners, that the lands were designated and treated by them and the government as those of Miranda, and not Ortega

The title papers of Ortega produced by the claimant present in some respects a suspicious appearance.

442 I pass over, as too inconclusive to merit attention, the observations which have been made on the supposed difference between the handwriting of Vallejo and Alvarado, as it appears on these papers and other writings of theirs at the time they are dated. But it is evident that the date of the marginal order of Alvarado was originally 1841, and has been altered to 1840. This alteration has apparently been made with ink of the same color as that with which the decree of concession was written. It is difficult to account for this circumstance. It is highly improbable that it was merely a clerical mistake, for it can hardly be supposed that a document would be dated a year in advance by mistake. Besides, if such a mistake did occur, it would scarcely have escaped notice at the time. But the correction in this instance is made with ink of another color, and apparently at a time subsequent to that at which the marginal order was written.

It is said that there could have been no motive for the alteration, for the papers would have been as good if dated in 1841 as in 1840. But the fact remains that the marginal order for Vallejo's report was originally dated subsequently to the report itself and the concession purporting to be founded on the latter.

443 A possible explanation of the alteration may be found by supposing the petition to have been drawn in 1840, the marginal order made in 1841, and the proceedings then to have stopped. On Ortega's return from Oregon he may have procured from Vallejo an antedated report, and from the governor an antedated decree of concession. These may have been dated 1840, to conform to the petition dated in that year, and without observing that the marginal order was dated 1841; on noticing the discrepancy, the date of the marginal order may have been altered so as to correspond with that of the other documents, or the date of the order may have been altered to 1840, under the idea that Ortega had gone to Oregon in 1841—an erroneous impression which Alvarado appears to have entertained, as is shown by his deposition.

This explanation is, of course, merely conjectural; but the claimant has been wholly at a loss to offer any, except the extremely improbable one that Alvarado, when writing the order in 1840, wrote the date 1841 by mistake, and that the mistake escaped notice at the time, and was corrected subsequently, as appears by the difference in the color of the ink.

But if the explanation I have suggested be received, there will then be afforded that slight basis of fact upon which fraud-
444 ulent pretensions have usually been erected, for it rarely happens that parties are audacious enough to manufacture title papers, so to speak, "out of whole cloth," and where the pretended grantee has never had any connection with the land, or taken a single step towards obtaining a title to it.

The explanation will also serve to reconcile the theory of the United States with the statements of De Maufras, and of Ortega, in Oregon; for the latter, knowing he had applied for the land, and that an order for an informe had been made, might not unnaturally have considered himself as having obtained some right to it, and he, or some other, may have so stated to De Maufras,

It is possible that Miranda, after obtaining permission to occupy from Vallejo, may have agreed that Ortega should apply for the land, to be held for their joint benefit, and thus the idea may have been suggested that Miranda was merely the tenant of Ortega.

In the foregoing review of the evidence every important fact and consideration has, I believe, been noticed. It is evident that the circumstances of the case differ widely from that of Alviso. Not only is there no trace of the existence of this grant in the archives,
445 but those records furnish strong presumptive evidence against its genuineness. The title papers are produced from the claimant's own custody, and their genuineness sought to be established by the testimony of witnesses known to have been connected with previous frauds, similar to that alleged in this case, whom the Supreme Court have declared unworthy of belief, and every one of whom, except Richardson, have been a party to the crime. The only witness who pretends to account for the map, and who, from the fact that the petition is in his handwriting, must have had some connection with the matter, gives, on that and other subjects, testimony, the falsehood of which is apparent, and the proofs in the cause show that

this important document was a copy of that presented by Miranda four years after it is alleged to have been presented by Ortega.

We find that another of the title papers has been altered as to the date, that no explanation of this circumstance is afforded, nor can any be suggested consistently with the *bona fides* of the transaction, except one almost too improbable to be supposed.

In the case of Alviso the Supreme Court, when considering the equities of the claimants, observe that "no imputation has been made on the integrity of his documentary evidence." In the case
446 at bar not only has such an imputation been made, but the proofs are such as to cause serious doubts as to the genuineness of the title papers. But the cases differ in another respect. In Alviso's case "no suspicions were raised unfavorable to the continuity of the claimant's possession and claim." In this case it is not pretended that the claimant ever occupied the land in person. He alleges that another occupied it for him. But the parol testimony by which he seeks to establish the fact is not only unreliable from the character of the witnesses, but their statements are inconsistent with the evidence furnished by the archives, so far as we could expect those records to furnish any evidence upon the subject.

The supposed occupation by Miranda, as the agent or tenant of Ortega, appears to have been unknown to any of the persons owning adjoining ranchos, and the government itself, acting on the report of the alcalde of the district, and of the secretary, directed a title to issue to Miranda for the land as public and liable to grants.

The permission to occupy, alleged to have been given by Vallejo to Ortega, was apparently unknown to the latter when he made his deposition, at least he fails to make any allusion to it, while the Miranda expediente and other proofs render it highly probable
447 that it was in fact given to the latter.

We find that by Ortega's own account he neglected during the whole period from the date of the concession, 1840 until 1843, when he went to Oregon, to take any steps to perfect his title, as required by the colonization laws, and expressly enjoined in the concession itself.

In 1843 he departs to a foreign country, under circumstances from which an intention to abandon his own might well be inferred, and returns to the governor all the evidences of his title.

Whether, then, we consider the doubtful and unsatisfactory evidence of the genuineness of the title papers, or the absence of all proofs of an ancient and generally recognized possession and the right of ownership, the claim in this case seems destitute of merit.

A decree rejecting the claim must be entered.

Endorsed: Filed Aug. 19, 1862.

W. H. CHEVERS, *Clerk.*

Decree rejecting claim.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the

city of San Francisco, on Wednesday the twentieth day of August, in the year of our Lord one thousand eight hundred and sixty-two.

448 Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ELLEN E. WHITE, adm'x of Charles White, deceased. } D. C. 346.—L. C. 558.

This cause coming on this day to be heard, under the mandate of the Supreme Court of the United States reversing and setting aside the decree of this court heretofore rendered, and remitting the cause for further proceedings to be had in conformity with the opinion of said Supreme Court upon the certified transcript of the proceedings and decision of the board of commissioners, and of the papers and evidence on which the same are founded, and upon the pleadings, depositions of witnesses and further evidence taken and filed herein in this court, both on the part of the United States and on the part of the said claimant, was argued by counsel, and thereupon in consideration whereof, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, that the claim of the said claimant is not valid, and that the same be, and hereby is, rejected, and that the petition for confirmation of the said claim be, and hereby is, dismissed.

OGDEN HOFFMAN,
U. S. Dist. Judge.

449 Endorsed: Filed August 20th, 1862.
W. H. CHEVERS, *Clerk.*

Order granting appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the 20th day of August, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ELLEN E. WHITE, adm'x of Charles White, deceased. } D. C. 346.—L. C. 558.

And now, at this day, on application of Mr. Crittenden, of counsel for the claimant in this case, made in open court, it is ordered by the court that an appeal in behalf of the claimant from the final decision of this court, rendered in said cause at the present term, be, and the same is hereby, granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said
450 cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed August 20th, 1862.
W. H. CHEVERS, *Clerk.*

Statement of Judge Hoffman.

Since the foregoing opinion was written I have been reminded of the fact that the sessions of the district court at which the cause was first heard was held by both judges, before whom an elaborate argument was had. The papers were taken, however, by the circuit judge, by whom the case was investigated, and who prepared and delivered the opinion of the court. It is, therefore, inaccurate to say that the claim was originally confirmed at a term of the court held by the circuit judge.

The fact that the cause was investigated, and the opinion delivered by the circuit judge, and that I concurred in the decision without giving to the case that thorough personal examination which I otherwise should have done, left me under the impression that, as stated in my recent opinion, the cause was decided in form, as well as in fact, by the circuit judge alone.

SEPTEMBER 29TH, 1862.

451 I, William H. Chevers, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed and foregoing ninety-four pages printed, and three hundred and fifty-six written pages, consecutively numbered, together with the maps and plates included therein, exhibit a full, true, and correct transcript of the record of proceedings, before the late board of U. S. land commissioners, as the same is on file in my office, and of the papers, evidence, pleadings, orders, opinions, and decrees, now on file in my office, in the case of the United States v. Ellen E. White, administratrix, &c., No. 346.

In witness whereof, I have hereunto set my hand and [SEAL] affixed the seal of the said court, this 10th day of October, A. D. 1862, and of our independence the 87th.

W. H. CHEVERS, *Clerk.*

Filed Nov. 28, 1862.



Supreme Court of the United States.

No. 174.—December Term, 1863.

ELLEN E. WHITE, Administratrix,

vs.

THE UNITED STATES.

ARGUMENT OF HON. JEREMIAH S. BLACK,

FOR THE UNITED STATES,

March 29th, 1864.

Gideon & Pearson, printers, 511 9th street, Washington.

Supreme Court of the United States.

No. 174.—December Term, 1863.

ELLEN E. WHITE, Administratrix, Appellant,

vs.

THE UNITED STATES.

Argument of Hon. J. S. BLACK, for United States.

Mr. Black said—*May it please Your Honors:*

This is one of the California land claims which the United States have resolutely determined to oppose, because it is false and fraudulent; the papers are spurious and the parol evidence comes from witnesses who are corrupt and unreliable. Distinct notice was given to the claimants in the Land Commission that such was to be the issue between them and the Government. That notice was repeated very emphatically in the District Court, and when the case came here the first time it was again challenged as a forgery. This court sent it back to the District Court for re-investigation, and there the struggle was upon this same question of fraud or no fraud all through. It was fairly heard, and the evidence brought the judge to the deliberate conclusion that the title had no basis in honesty or truth. If the record satisfies you that he was mistaken in the legal weight to which the facts are entitled, you will reverse his decree and send back the title confirmed. But I think you will perceive that he has dealt with it even more leniently than he was required to do by the laws of the land.

It must be known to each member of this court that the policy of the United States, in all their dealing with just and honest claims of this kind, has been not only fair and proper, but in the highest degree liberal. In this policy the legislative, the judicial, and the executive departments have all concurred. No opposition has ever been made to the confirmation of any title proved with tolerable clearness. This Government has not acted as a contentious litigant, but as a great nation striving to do justice between her own people, and to keep her hands uncontaminated

by the stain of bad faith. I speak of the general line of policy heretofore pursued. Some cases may have been before you during the present term, of which I have no right to speak now, and others of which I cannot speak for want of knowledge.

But the honest claimants under Mexican grants have suffered very great vexation, long delay, and much expense from the necessity the Government was under of making a rigid investigation into each case. That necessity arose out of the well-known fact that many claims were founded upon spurious titles. Lands larger in quantity and greater in value were claimed in California, under forged papers, than were ever so claimed in any other country in the world. Wherever it became absolutely necessary for the United States to have a spot for the purpose of a fortification, a light house, a hospital, or a navy yard, some adventurer came forward with a fabricated paper under which he claimed a right to the same land. After the Government had expended $840,000 in building a fort at Point Lobos, a forgery made its appearance, under which it was demanded that the United States should pay not only the original value of the land upon which the work stood, but all the additional value which the United States had given to it by the expenditure of their own money. Angel island, Mare island, and the Marine hospital were claimed in the same way. If the United States had acknowledged these titles to be true, it would have cost the treasury uncounted millions to get the privilege of guarding and lighting that coast.

If a thriving town sprung up suddenly and grew rapidly, when the lots were laid out and sold and built upon, some miscreant presented himself with a paper purporting to be signed by one of those facile governors, Micheltorena, Alvarado, or Pio Pico, and asserted his right to all the improvements and the ground upon which they were built. The city of San Francisco was, of course, the most attractive point to these malefactors. The very heart of that town was covered, four deep, with fraudulent titles.

Rich and beautiful valleys in the interior of the country, with great agricultural advantages, drew the attention of the settlers. The emigration from this side of the continent and from other parts of the world flowed in upon them; they were soon filled up, divided into farms; houses and barns were built; the land was drained and fenced, and the waste places were converted into fruitful fields. These settlers acted in good faith, for the records of the country gave them notice that it was public land, upon which, by the laws of the United States, they had a right to locate themselves, and they had no notice of any title in a private individual, for no such title in fact existed.

When they had expended all the money they brought there, and all they could earn after they arrived, together with the toil of years, in making improvements, attempts would be made to

take their property away under titles then produced for the first time, and which were sheer, impudent fabrications.

When I say these things were done in California, I am bringing no railing accusation against the people of that State. They are as good as the population of any other country on the globe; and when we reflect upon the situation in which they were placed, perhaps we may find reason to believe that the majority of them were a great deal better. We must consider not merely what they did, but what they forbore to do. From 1846 until 1850 there was no law to punish forgery. They were in the condition that the Jews were in when there was no king in Israel, and every man did what seemed good in his own eyes. The penal laws of Mexico were, of course, overthrown by the revolution of the government. The laws of the United States were not extended there until the erection of the State government; and in the meantime, there was no code derived either from the common or the civil law. A kind of wild justice, to be sure, was administered in the lynch courts, but I am not aware that the offence of forgery was considered within their jurisdiction.

On the other hand, look at the temptation to which they were exposed. They believed that a paper not registered or found among the records, but signed after the war by a Mexican official and ante-dated, would be just as good as the best title that ever was recorded, if they could establish it by simply calling a witness who would testify to its execution. To impute such an opinion to those persons may seem like a charge of judicial blindness, but it is not so. My friend and brother, General Cushing, whose right no one will dispute to stand among the foremost lawyers in America, entertains exactly the same opinion now, and will argue it before you with great earnestness. According to that opinion, a man might sit down and write out a paper, get it signed, and make a bargain with some professional witness to swear it through, which paper, if believed to be genuine, would be a good title for the land described in it, without reference to the records of the Government.

By these easy and safe means any man, with a conscience hardy enough, could entitle himself to a piece of land constituting the military key of the country, for which the United States would be obliged to pay whatever price he chose to put upon it. By the same process, he might make himself the lord of some great city, whose population doubling itself every year, promised at no distant time to be a place of as much commercial importance as Philadelphia or New York. Or he could acquire the unlimited dominion of an owner over 50,000 acres of the richest land in the world; every acre perhaps containing gold enough to fill the treasury of a king.

With temptations like that besetting them upon one side, and

with perfect impunity on the other, is it any wonder that some men's virtue was not sufficient to resist the evil? From the time when Satan first began to angle for the souls of men, he never threw a hook with such magnificent baits upon it. The only thing to cause surprise is, that one-half the population did not abandon all other employments and betake themselves altogether to the business of forging land titles. I certainly should tremble for the morals of any community in which I have ever lived, if it were placed in the same situation. And yet very few men in California were engaged in these frauds. The whole number, including the professional witnesses, would scarcely count 200 men. Those who went through the fiery furnace of that temptation without the smell of fire upon their garments, can be trusted anywhere; for they are men of tried honesty.

What I have said accounts for the rigid investigation which the Government was obliged to institute into these cases. It was rendered laborious, painful, and in some degree uncertain, by the manner in which it was conducted before the Land Commission, and sometimes in the District Court. Professional men on both sides, and judges also, not very unfrequently seemed to forget altogether those fundamental rules of evidence which the experience of mankind in all ages and in all countries has demonstrated to be absolutely necessary to the investigation of truth. For instance, a claimant, instead of proving that he had a title, would give evidence that *somebody said* he had a title. Fraudulent claimants were permitted to prove *their own lying declarations*, and that was taken as proof that the facts asserted in such declarations were true. When a written paper was to be proved, instead of calling the subscribing witness who knew when and how it was executed, they *passed him by*, and called some other person who pretended to know nothing about it except that the signatures seemed to him to be the genuine hand-writing of the parties. Again: although it was very well known that the written law of Mexico required every land title to be recorded, and although it was equally well known that every governor was in the habit of recording grants before they were issued, and filing the expedientes among the archives, it was not an uncommon thing to *ignore the records entirely*. A paper of which no trace could be found on the record, but which had been carried about for eight or ten years in the pocket of a shirtless vagabond like Ortega, was treated with all the respect and reverence due to a registered grant.

These violations of reason, logic, and law, produced their necessary consequences. They led all concerned into a howling wilderness of error, from which there was no extrication except by a return to the beaten paths, the *antiquæ viæ* of the law. The Supreme Court found it necessary to correct those errors. It

was done gently but firmly; the law of evidence was vindicated. It was declared that the best evidence that the nature of the case admitted of should be produced, and that men should derive no advantage from the spoliation of the proofs, or the suppression of facts. Common-sense and law resumed their control over legal proceedings, and this court now stands pledged to the nation, in the face of the whole world, that no title of this kind shall be confirmed without evidence from the record.

In the present case, you have a title before you not coupled with any pretence that a fragment or vestige of it can be found anywhere among the records or archives of the Mexican government. The doctrine so often exploded here is re-asserted that a record is not necessary. Before you can assent to a confirmation, you must not only reverse the decree of the District Court, but overthrow and tread down twenty-five or thirty decisions of your own.

I am free to admit that if the rule heretofore established, and so often reiterated, is to be overthrown, this is the very case to do it in. If you do it here, it will be done unequivocally; there will be no ambiguity about your opinion; all men will understand that the law as heretofore pronounced is wholly repealed, and the doctrine enunciated in other cases thoroughly reversed. I do not think that such a change is desirable. The true course is to go straight onward on the line already marked out. Sound policy and sound principle require that every court should remember the admonition which says—"stand fast upon the ancient ways, look at the old paths, observe them well, and be ye not given unto change." But if there is to be a departure, from the old way, let us have the new road cut clear, and let the old one be stopped up so effectually that no man shall be induced to travel upon it and lose himself in the woods.

I regard this rule which you have established, of requiring record evidence in every case, to be one of the most symmetrical pillars in the temple of the law. It stands upon a broad basis of eternal justice and truth. If it is to be overturned, let it go down in ruins at once and forever. The worst thing you can do with it is to undermine it, or tilt it over, so that no man can tell whether the centre of gravity is inside or outside of the base; so that no man can know at what moment it is to tumble or whom it will crush when it does tumble. Down with it, therefore, at once and forever, or let it stand undisturbed.

You will readily see that this case is, of all cases, the one in which you can most readily make an end of the rule by confirming the title. Here there is not only no record supporting the title of the claimant, but there is undisputed record evidence to show that a title for this same land was made to another man. That other man was for many years in actual, open, notorious,

visible possession under his title. His title was acknowledged by the departmental government at Monterey, by the local authorities of the district in which the land lay, and by every *colindante* on all sides of him. In addition to these facts, the parol evidence by which the claimant supports his averment of title, comes from witnesses whom the judge of the District Court in this case declares in his opinion to be unworthy of belief. Every known fact proves that the papers produced by the claimant are false and spurious. But then if my learned friend, Mr. Cushing, be right, the paper produced from the pocket of Ortega, with the signature of Alvarado appended to it, is just as good as a record; and if so it is conclusive; all the evidence we have produced against it must go for nothing, and that which they have introduced to bolster it up was mere superfluity.

There is another reason for selecting this case in preference to any other that can well be conceived, for the repeal of the principle heretofore established. My friend, Mr. Cushing, is entitled, if anybody in the world is, to win this triumph over justice, over law, and over the court. When you come to the conclusion that he ought to be gratified you will naturally desire to find plausible reasons for the inconsistency of which you will find it necessary to be guilty,—and he will furnish them to you if anybody can, for he is greatly gifted with that power of glozing speech which can—

> ——"Make the worse appear
> The better reason to perplex and dash
> Maturest counsels."

The facts surrounding the origin of this claim, all the circumstances attendant upon its first production, the whole history of the claimant himself, are calculated to impress you deeply with the conviction that this is a case literally splendid in the opportunity which it presents of showing that record evidence is of no value, and that a private paper concealed for many years is, and ought to be, conclusive evidence of title.

Ortega and those claiming under him assert that he got a title from Alvarado in 1840, which he produced for the first time in 1848. They show certain papers bearing date in 1840, with the names of the claimant, Vallejo, and Alvarado attached to them. They consist of a petition, an *informe*, and what they call a decree of concession. Look at the last named paper. It is not a decree of concession. A decree of concession is an order that the title issue. This is an order that the title shall *not* issue. It contains a declaration of certain reasons why it cannot legally issue. No title ever did issue. Ortega in his deposition, says that he went to Monterey for the purpose of getting a title, and failed because the departmental assembly was not in session at the time; a reason which upon its face is palpably false. But the counsel for

the claimant have told you, and will tell you again, that this is an equitable title and none the less conclusively good because it was a private transaction between the governor and the grantee.

In confirming a title like this, the court must say that it was made according to "the laws, usages, and customs of Mexico." Is there any law of Mexico which authorizes a title to be made without a registry? No. The written law of that republic declares the direct contrary. Was there any usage which sanctioned a violation of the written law? All that we know concerning the administration of the colonization law contradicts such an assertion. Every judge upon that bench knows perfectly well that a title like this, if it ever was made at all, was made in plain violation of all the laws, customs, and usages of that country.

But were the papers made at the time of their date? Ortega did not produce his title nor make any claim to the land until 1848. Then he unfolded them to the daylight and asserted himself to be the owner of four leagues of rich and productive land which he had never claimed before. He immediately began to take grand airs upon himself. Previously he had been a hanger-on about General Vallejo's establishment, almost literally feeding upon the crumbs that fell from Vallejo's table, and picking up a precarious living in the best way he could by doing odd jobs for anybody that would give him a meal. Then he was simply Antonio Ortega. But about the time he produced his land title he announced himself as Antonio Leonita, *Duke of Ortega*. Having acquired a princely fortune, it became necessary for him in his opinion to assume a ducal title, and doubtless he had just as good a right to the title as he had to the land, and as good a right to the throne of France as he had to either.

His counsel, I believe, have come to the conclusion after a very careful investigation, that he was a remarkably clever and respectable man; but I presume that it will not be asserted by either of them that he ever was able to furnish a decent living either for himself or his family. He was miserably poor. It is not possible to conceive how any man living in a country where provisions were cheap and plenty, could be in a more indigent and necessitous condition. Yet, when he was suffering almost the extremities of hunger and nakedness, they would have you believe that he was the owner of 20,000 acres of the most productive land in that rich and productive country, and all the immense herds of cattle and horses with which that ranch was stocked. But though he was the owner of the ranch and the stock, he never once attempted to relieve his necessities by getting a pound of beef, or a bushel of wheat, or a sack of flour from his property; he never demanded the right to furnish himself with change by selling a cow or a calf; he never demanded a cent of rent or any division of the produce. He married a wife

and had two or three children, but he did not support them. He parted with them. She went her way and he went his. Her way was to this ranch where her father lived, and his was in another direction. He went with Mr. Walker, as a drove hand, to Oregon. When he left, he expressed his intention never to return; but he did not propose to sell his ranch, nor the stock upon it. He appointed no agent to take care of it in his absence. He made no demand for back rents and no provision for the collection of those which might accrue in the future. He started away with all the earthly goods that anybody knew him to be possessed of, all that he asserted himself to be the owner of, and they consisted of one cow and two horses—cheap ones, of course, which somebody had given to him. His own wife testifies that, previous to that time, she never knew of his having anything but one horse.

It must be remembered that his journey to Oregon was made with a drove, in which he was permitted to have a share. The time had then certainly arrived when he could make the immense stock of cattle, which he had upon Miranda's ranch, available to himself. He could have gathered up two or three thousand and taken them to Oregon, with the prospect of a high market and a ready sale! Is it not singular that he should have turned his back upon the herds which he left behind him, "feeding upon a thousand hills," to go 500 miles northward with a drove in which his share consisted of one solitary cow? Considering how rich a man he was, he was content with a very small stock in trade!

In Oregon he was kept awhile by Father Acolti, a Catholic clergyman, and a while by Walker; both of whom took him in as a charity. He earned nothing there, except during a short period while he was a waiter at a boarding-house. To Father Acolti he said that he was the owner of a ranch in California, stocked with cattle, upon which his wife was living. To Walker he admitted that he had no title for any land, but said he expected to get papers for some land on the Estero of *Petaluma*, when he should return. He meant by this, and Walker so understood him, that he would get the papers fabricated when he went back to California. Walker warned him that he would not be able to accomplish such a purpose; but he insisted that he would, and offered to give him a league of the land when he should succeed. Walker started him back to California, that is, gave him the means to go. He arrived in 1847, four years after his departure. Walker himself came to California a few months afterwards, and must have been somewhat surprised to find that the man whom he had been feeding and clothing as an object of charity, was metamorphosed into the Duke of Ortega and Lord of the Arroyo de San Antonio! He offered to show Walker the papers which he said he had got for the land, and Walker, with some reluctance, consented to look at them. They were not such papers as

these produced in evidence, but a totally different set. That proves that the title which is now here produced was fabricated subsequently. He then offered Walker a league of the land, but Walker knew the title to be counterfeited, and had sense enough to see that he would only get himself into trouble by having anything to do with it. Subsequently he offered a conveyance to Father Brouillet, a French priest, who, not understanding the thing as well as Walker, agreed to take it.

Even after the fabrication of these papers, though he told Walker and other persons, in confidence, that he had them, he never dared to demand possession under them. He did not go to Teodoro Miranda, who was living upon the ranch and demand posession of him. His own story, which may be true or may be false, is that he made his claim known to the widow of Miranda. She denied it, and he wilted under her contradiction so completely that he never dared to assert his right again, in the face of any member of that family. When these papers were made and produced, and Ortega declared himself to be the owner of Miranda's ranch, one difficulty which stared him in the face would have been perfectly insuperable to anybody but himself. He had not only shown no title at any previous time, but another person was in the actual possession of the land, claiming it under a title of his own, cultivating and using it as his own in the face of the whole country, acknowledged to be the owner of it by all the public authorities, and by the people of the whole neighborhood. How could human impudence assert a title to that land under such circumstances? The question might have been asked him which the Prince put to Falstaff, after the monstrous lies he told about the robbery at Gadshill and his fight with the eleven men in buckram,—"What trick, what device, what starting hole, canst thou now find out to hide the from this open and apparent shame?" Ortega's answer would have done honor to Falstaff in his best days. With unblushing mendacity, he replied—"Why that man was in possession under me; he was my tenant and I was his landlord." Where was the lease between him and Miranda? There was none. When did Ortega receive or demand any rent? Never. When did Miranda pay or offer to pay any rent? Never. What was done by one party to assert his right as landlord, or what by the other to acknowledge his obligation as tenant? Nothing.

This mendacious assertion on the part of Ortega that he was Miranda's landlord, is calculated to arouse the indignation of any judge. After a lapse of eight years, in which he made no claim, but saw the land in possession of Miranda, and after Miranda's death, leaving the land in the possession of his family, Ortega alleges the relation of landlord and tenant, and the claimants under him hunt up one or two witnesses by whom they attempt to prove

loose conversations of Miranda, from which they insist that the fact is inferable. There is no system of law in any Christian country which allows the family or the creditors of a dead man to be attacked in this base manner.

Suppose a man in New-York or Pennsylvania to have lived ten or twelve years upon a farm for which he has a regular title. No question is made about it in his lifetime. After his death a party comes forward to claim it under a title never heard of before. The first answer is that the title of the claimant was never recorded. This would be just as perfect an answer under our registry laws as it is under the colonization laws of California, and not more so. But actual possession perhaps may be sufficient to excuse the want of a registry. The claimant attempts to make out that the known possession of the dead man was his possession, and for that purpose calls a witness to prove loose declarations made in his lifetime. The family can show that their decedent was in possession not only under a title of his own, but went in at a time, and in a manner, and remained there all his lifetime under circumstances which make the story of his being a tenant in the highest degree improbable. Would such a case be listened to for a moment? If it would, whose title could be regarded as safe?

It is not merely the want of evidence that enables us to deny the existence of any such relation between Ortega and Miranda; the fact is directly proved to be otherwise. The very circumstances under which Miranda went in are detailed by Martin and by Ramon Mesa, both of whom know, of their own knowledge, that he went there under a claim of title in himself, and that he was there before the date of the pretended concession to Ortega.

I desire to say a word about the character of the witnesses. Some years ago a question arose in this court whether a witness not impugned by anything on the record of the case under consideration, could be treated as unworthy of belief on account of what was known to have happened in another case. Putting it into the simplest form, the question may be thus stated: Supposing two cases to be heard in the District Court, in both of which the same witness testifies; one case is heard and decided, and the judge in his opinion pronounces the witness in question wholly unworthy of belief, because he has manifestly and undoubtedly committed perjury. In the second case the testimony of the witness is passed over without notice and no reason is given for doing so. The two cases come up into the Appellate Court, and in the last one of the two an attempt is made to reverse the decree because sufficient weight was not allowed to the testimony of the witness. Then comes the question, may not the party against whom that witness was called refer to the record in the other case for the purpose of explaining why the judge

did not believe it in the case under consideration. This court answered that question in the negative, and declared that the character of every witness must be judged by the record, and nothing else. I do not ask that point to be reconsidered. This is another question. Here the judge has found certain facts and placed them upon this record. He says that for reasons which are given, some of the witnesses are known not to be men of integrity and veracity. I maintain that the reasons are good and that this court is bound to accept them as true.

If you will look at the traced copies of Vallejo's signatures of different dates, you will find that this one bears no resemblance to the signature he was in the habit of making in 1840, 1841, and 1842, and that it is precisely similar to his signatures in 1848 and 1850, and thereabouts. I know not what impression this may make upon your minds. It does not seem to have had much effect upon the judge of the court below, but I call your attention to it because it has thoroughly convinced me that this *informe* of Vallejo's was made a very short time before the first production of the papers by Ortega.

The map produced along with Ortega's papers is a precise *fac simile* of the one which is found in the archives with Miranda's *expediente*. One was copied from the other. It is almost impossible to believe that Miranda's could have been copied from Ortega's. It is easy to see how Ortega's might have been copied from Miranda's. When this fact is coupled with the testimony of Walker, which shows that no such map as this was among the papers that Ortega showed him in 1848, it can leave but little doubt upon the mind of any one that it was a mere fabrication.

Miranda's grant is on "Jimeno's Index." Ortega's is not, nor is the latter mentioned in any record. The value of that index arises out of these facts: At the time when questions began to be raised about the validity of these Mexican grants, it was seen and admitted by most professional men, that the great source to which resort must be had for the purpose of gaining information was the record. Captain Halleck was required by his military superior to make a report upon the condition of the archives; Mr. William Carey Jones was sent by the Interior Department from here to California, for the purpose of examining and ascertaining what titles appeared by the records to be good. His list was the only one we had at first, and for sometime it had a kind of authority. But it was soon found to be full of errors.

The false claimants managed to turn attention away from the records by asserting that they were not in such condition as to make them reliable evidence either one way or the other. They produced the testimony of Governor Pico, Colonel Fremont, and Captain Halleck to show that the archives had been taken from the Mexican officers, rolled up in bales, carried about on mules,

deposited with private individuals, left neglected at Benicia, and finally handed over to the American authorities in a state much the worse for the roundabout journeys they had made. A large number of them, it was said, had been lost or destroyed. Captain Halleck's testimony, and that of one or two other witnesses, made it appear (or rather made it seem to appear) that a portion of the records were left at the custom house in Monterey, and were torn up and destroyed. Besides; many false additions had been made to the archives after the conquest of the country. It was known that some had been fraudulently interpolated. The consequence was that when you objected to a title that it was not found upon the record, the answer was always ready; "These records have been lost; I had a record once, but it has disappeared." On the other hand the presence of a record among the archives was no evidence that it had come there honestly. So the archives were in a fair way to be rendered entirely useless. The presence of an espediente in the Surveyor General's office, dated before the conquest, was no evidence of its genuineness—the total want of record evidence raised no presumption against the claim. If there had been a true *toma de razon*, in which all the grants were registered, that would have settled the controversy. But the *toma de razon* from 1835 down to December, 1843, was burned in the great fire of 1851, as Captain Folsom testified. The one that began in January, 1846, and terminated with the end of Pio Pico's administration, on the 7th of July, 1846, was also lost. So there was no *toma de razon* anywhere to be found among the records except one for the two years begining on the 1st of January, 1844, and ending the last of December, 1845.

Under these circumstances it certanly was most fortunate that an official paper should be found containing a list, carefully made out, of all the grants issued down to the close of 1844. It was not only a catalogue of the grants, with the names of the ranchos conceded and the names of the grantees; but each grant on the list was numbered. The espedientes were found to be numbered also, and upon comparison it was ascertained that the numbers corresponded in every case. A still further investigation showed that *not a single espediente was missing.* The falsehood of the stories concerning the loss of records was completely exposed. It became perfectly certain that the papers relating to every grant actually made, or known by Jimeno to have been made, at the date of his Index were still in the archives. A false claimant, therefore, cannot say that his espediente is lost; its absence from the record now is full proof that it never existed. Nor could any man set up a loose paper found lying among the archives, not numbered nor marked; for this Index would show that such a paper could not have been part of the Mexican records.

I admit the possibility of this catalogue being imperfect. It

may be that Jimeno was sometimes mistaken in supposing that to be a good concession which was in fact a mere unfinished application, or *vice versa*. He may have written *negado* on his list in a case where he should have said *concedido*. But the value of the document does not consist in his judgment; it consists in the evidence it furnishes of the fact that certain espedientes are genuine—were in the office at the close of 1844—are there yet; and of the further fact that certain other espedientes which have been dropped among the archives, produced from private custody, are not genuine and were not among the archives at that time, though dated before. Any grant enumerated on that Index, and for which an espediente correspondingly numbered is found among the archives ought to be treated as genuine in the absence of evidence, direct or circumstantial, showing the contrary; and every presumption is against a loose paper not mentioned there, if the pretended date of it be as early as 1844.

The Toma de Razon for 1845, is in full preservation. That leaves no serious difficulty in the want of a registry except in regard to titles made during the last six months of Pio Pico's service as governor. The journals of the departmental assembly have checked most of the fabrications for that period.

It follows that a grant found noted in Jimeno's Index is to be regarded as certainly genuine. Whether it be regular or not is a question to be settled by an examination of the espediente. But all natural presumptions and the conclusive legal presumption are against the honesty of any grant not found on that catalogue or elsewhere among the authentic records of the Mexican government.

The title of the ranch now in question was in Miranda. His grant is noted and his espediente is found among the archives in its proper place, just as it was made up—the petition, map, informe, decree of concession, and borrador of titulo—all perfectly regular. On the other hand Ortega has nothing but a private paper, which the record as well as all the known facts of the case prove to be a fabrication.

Miranda's title was preceded, accompanied, and followed by actual undisputed and undisturbed possession, begining before the date of his adversary's antedated papers, and ending only with the end of his life. That possession was transmitted to his family. This fact is conclusive in itself and has received no answer from Ortega, except the impudent assertion that Miranda was his tenant—an assertion which is unsupported by any evidence except the loose conversations loosely sworn to by two witnesses, after Miranda's death.

I believe this court will not confirm the title of Ortega. I know they cannot without contradicting all former decisions. Miranda's title is not now in question. If it ever comes before you

the evidence of its legal justice cannot be resisted. It has had divers misfortunes. It was misunderstood and misrepresented, and its owners, ignorant of their rights, were imposed on by the present claimants. But it was their private property at the time of the conquest, and the manifest duty of the United States to see them protected will not be postponed forever.

1969